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No 785

Nos. 7427, 7428, 7429

In the United States Court of Appeals for the Fourth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

TWIN CITY POWER COMPANY, APPELLEE

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA

APPENDIX FOR THE UNITED STATES

FILED
JAN 10 1957
R. M. P. WILLIAMS, JR.

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Excerpt from the cross-examination testimony of Dr. William P. Creager (a Twin City power value witness), part of which is included herein at the request of the appellee, Twin City Power Company:

[Tr. 172]

* * * * *

Q. All right, now let's go to the steam plant. What steps did you take in arriving at this steam plant comparison, and so forth? A. I computed the power available and computed the annual cost of the out-lay. That annual cost makes it a little difficult for me to explain but it is a case of cut and try. In order to compute that annual cost I had to include in my cost of construction, the cost of making the development, the estimated cost or estimated value of this land, and when I assume a value for the estimated market value for this land—well, I won't say that. Theoretically—well, I will put it this way: The [Tr. 173] theoretical amount which the buyer could pay for the land, in order to come out so as to produce power exactly equivalent to steam, I had to try several times before I got the right answer. In other words, I included in the cost that amount of money, and then I computed the cost, corresponding cost, getting that same amount of cost from steam. If those two came out even, the cost of producing from hydro and the cost of producing from steam, they came out even, exactly, then the amount which I included for the theoretical price that the willing buyer could pay for the land, which I included in my estimate for that, was correct, if it wasn't, I did it over again until I got it to come out even.

Q. Now, you stated there in arriving at the cost of development of a 60 foot dam, you took a theoretical land cost, an estimated land cost? A. I took an estimated land cost.

Q. Now, where did you get that? A. I took my own, on what I was told was the fair market value as wild forest[1] land. You would not allow me to put that in the testimony before, but that is what I took, and I assumed that you would have to pay quite a little bit in excess of forest land value to get it, based on my experience in other parts of the country, not down here.

Q. Well, for this purpose I would like to know what you were told was the value of this property as wild [Tr. 174] forest land and which you used in arriving at your own figure? A. I assumed the market value for wild forest land was $80.00 an acre.

Q. That was $80.00 an acre? A. Yes, sir.

Q. As of what date? A. That was the date of the taking of this project which is 1947. I think it was June 23, 1947, and then I multiplied that by 5.7, and I ended up with $460.00 an acre, what I thought you might have to pay for that land.

Q. Excluding power site value? A. Yes, excluding power site value.

Q. Excluding power site value? A. Yes, a hold up value.

Q. Four hundred and what an acre? A. $460.00 an acre.

Mr. Robinson [counsel for Twin City]: If I might ask: That was what you estimated would have to be paid for lands which the Twin City Power Company did not own?

The Witness: That's right.

Q. Now, who was it that gave you the figure of $80.00 per acre for the forest land? A. I think it was Richard Johnson. No, I recall now, Mr. Robinson showed me a tabulation that he had been given as the estimated cost, estimated value in acres, and I divided one by the other and I think I got $82.00 or $83.00 an acre and I used $80.00 an acre. [Tr. 175]

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[1] In the reporter's transcript of the testimony, throughout this excerpt the word "forest" is misspelled as "forrest".

Q. Then, at that point, you had the cost of all the land that Twin City did not own? A. Yes, sir * * *

* * * * *

[Tr. 356] Mr. W. M. Henderson, Sworn for the Twin City Power Company, Testified as follows.

Direct Examination

By Mr. Robinson:

Q. State your name to the Reporter, please sir. A. W. N. Henderson

Q. Where do you live, Mr. Henderson? A. Ninety-Six, South Carolina.

Q. What is your business, Mr. Henderson? A. General Farming and live stock business.

Q. Have you had any experience in appraising lands? A. Yes, sir.

Q. Tell us about that briefly. A. I began to appraise land for the Federal Land Bank back in September, 1925. I continued in this capacity until 1939. At that time I was put in charge of the Federal Housing Acquirement Section to make loans in the four states of North Carolina, South Carolina, Georgia and Florida. We made loans on farm property just like the FHA does on city property. I continued in that capacity until 1942 or 1943 when the services were discontinued. During that time we made about seventy-five million dollars worth of loans. While I was with the Land Bank I obtained the rank of senior appraiser. We had four in the outfit at that time that obtained that rank.

Q. How far do you live from the Price's Island Dam Site? [Tr. 357] A. Right around forty miles.

Q. About forty miles? A. Yes, sir.

Q. In connection with your appraiser work for the Federal Land Bank and the Rural Housing Program, did you have occasion to appraise lands in the general neighborhood of this site? A. Yes sir, I appraised about 45,000 acres of land belonging to the Georgia Power Company in

the basin, and by the way, there are about 85 or 86,000 acres in the basin.

Q. Have you, since World War Two had occasion to appraise land in this area? A. Yes, sir.

Q. You have also had occasion to appraise lands down in Aiken County, South Carolina? A. Yes, sir.

Q. Now, Mr. Henderson, at our request, did you make an appraisal of the Twin City properties as shown on this map, Exhibit 25? A. I did.

Q. And at our request did you appraise only the lands which we advised you that the Twin City Power Company owned in fee? A. Yes, sir.

Q. That also included three tracts colored in green here in which the Twin City and the Blackwell family owned jointly? [Tr. 358] A. Yes, sir; I put a separate appraisal on that.

Q. Did you make any appraisal on property over which we had flowage rights? A. No, sir.

Q. Did you make any appraisal of any property over which we had an option to buy? A. No, sir.

Q. Did you make any appraisal on the bed of the Savannah River itself? A. No, sir.

Q. Did you make any appraisal on the transmission lines right of way in the neighborhood of Price's Island down to north Augusta? A. No, sir.

Q. Now, will you tell us what you understood as to the fee ownership of the Twin City Power Company by number? Do you have that information there before you? A. I have all the tracts.

Q. That you appraised? A. Yes sir, that I appraised.

Q. All right, give us that. A. Well, I will read this report I have here.

Q. Did you prepare the report yourself? A. Yes sir, I prepared the report myself. I spent about ten days on this property, beginning the last of April——

Mr. Miller: I wonder if we couldn't take them up by civil actions. The valuation is going to have to be dated by the civil action.

[Tr. 359] The WITNESS: I have got all of that. I am going to start with paragraph covering these tracts. These tracts, located in McCormich County, South Carolina, and containing 1605.81 acres, shown by the government survey, as Tract F-500, containing 1033 acres, date of taking 5th month, eighth day, 1950. Tract H-700, 497 acres, the same day of taking, 5-8-50; Tract H-732, 70 acres, date of taking fifth month—No, seventh month, fifth day, 1950.

Commissioner McFADDEN: What month?

The WITNESS: 7-5-50.

Commissioner McFADDEN: All right.

The WITNESS: The total acreage 1605.81, as surveyed by the government. Twelve tracts located in Lincoln County, Georgia, containing 2908.82 acres and shown by the United States Government survey as follows.

Tracts No. E-431—.47 acres, date of taking July 5, 1947. Tract No. 434, 1064.47 acres, July 5, 1947; Tract E-439, 328 acres, December 10th, 1949; Tract E-498, 3.20 acres, July 5, 1947; Tract E-443, 429.51 acres, December 30, 1949; Tract E-446, 128.03 acres, December 30; Tract E-449, 5.51 acres; July 30; E-457, 24.26 acres, July 30th; Tract G-600, 249.06 acres; G-616, 121.53 acres, July 13, 1950; Tract G-694, 546.78 acres, that was on July 13. On July 13th again was Tract G-694, 10 acres. Total 2908.82 acres. Since the taking that has been a little difference in the acreage given in which it amounts to 20 acres less, which leaves 2831.67 instead of 2908.82, as appears in my report.

Mr. ROBINSON: I am inclined to think that original [Tr. 360] tabulation is correct, but we can check it later.

Mr. MILLER: All the acreage that I checked is correct, but I think he has one wrong date.

Mr. ROBINSON: I think if you use, my thought was, the date of the Judge's order rather than the date of the filing of the declaration——

Mr. MILLER: That would not make any difference. I was checking the acreage, but I thought he had one tract under the wrong date of taking, but we don't make any point about the several dates.

Commissioner McFADDEN: May we have a copy of it for the record?

Mr. ROBINSON: If you will give me just a minute, or take just a few minutes recess I think I can get it together for you.

Commissioner McFADDEN: You don't have the date of taking of E-431?

The WITNESS: July 5, 1947.

Commissioner McFADDEN: Tract E-439, 328 acres, that is the same date.

NOTE: Recess and off the record discussion.

Q. Now, Mr. Henderson, in connection with your appraisal of the property, did you have some photographs taken? A. Yes, sir; I spent a day with an expert photographer making pictures, making various pictures of the dam site, the old railroad fill, and several of the outstanding shoals, Wallace Dorton Creek Shoals, Steumons Shoals, Tucker Shoals and Ring [Tr. 361] Neck Shoals, and several others.

Q. Those are pictures, Exhibit 17, there? A. Yes, sir.

Q. Have you got an additional copy of it? A. Yes, sir.

Q. Look at this copy, so you can follow it, and start at the first one, so we will know which you are talking about. A. No. 1 is looking across the river from Georgia to the Carolina side, the Wallace-Dorton Creek Shoals. That is that picture right there. That is Dorton's Creek right there. That represents that picture right there. Now, the Wallace Creek and Dorton Creek, this is the same picture. This picture there, looking down the stream is in the same position in which the other picture was taken. The other one was up and this one is down stream. Now, Number three, Steumons Shoals is up stream view from the Georgia side. That is this view right here. No. 4 is the same looking across the river from the Georgia side above Stenmans Shoals. That's this picture here. There is a lot of high timber there and that did not get a clear outline except the Carolina side of it. No. 5 is looking across the river from the Georgia side opposite Tucker Shoals.

Q. Where is that? A. That is way up here, about here, right in here.

Q. That is near Spring Branch, is it? A. Yes, sir. No. 6 is the head of Ring Jaw Shoals, looking up the river from Georgia side from the hill top point. No. 7, Head of Straight-Tucker Shoals, looking across the river from the Georgia side. That's that picture there. No. 8 is [Tr. 362] a picture of Ring Jaw Shaw Shoals taken at water edge on the Georgia Side. That is the same picture, two exposures. No. 9 is looking across the Savannah River at Dam Site and lower end of Price's Island from the South Carolina side to the Georgia Side.

Q. That's down at the dam site? A. That's Price's Island, you see, right there in the river. This is the back water, coming out of the river, coming out here. I had to wade in with rubber boots to get that part of it. It wasn't out of the banks, just in low places. This is picture No. 10 of a scene at the east end of the dam site showing end of railroad, and some excavations and evidence there. This is where they done a little excavation in this high bank on the Carolina side. This is Mr. Blackwell's land, and he is standing at a point where there is a big rock, and where they done a little digging in there. No. 11 is the old Kilcrease Ferry Road from Modoc at a point of the Twin City Railroad Trestle Crossing.

Q. That's approximately the end of Price's Island. A. Yes, sir. This is the old Ferry Road cut through this hill, and that is where they proposed to anker the dam.

Q. All right. A. No. 12 is a site of the Twin City Railroad cut near the dam site. No. 13 is the railroad fill at entrance to last cut approaching dam site. A fill coming in on the railroad, coming up to the river. No. 14 is Junction Point of Twin City and C. W. C. Railroad at Modoc, South Carolina. That is where the side track joins the C.W.C. Railroad at this point where [Tr. 363] it comes off in this direction to go down to the dam.

Q. I believe all of these were made in May, 1951, were they not? A. Yes, sir; they were made on the 20th day of May by Paul Morris of Greenwood.

Commissioner McFadden: Gentlemen, do you want to recess at this point for lunch or run on for a while?

Mr. Robinson: I have no objection to stopping.

Mr. Miller: While I eat breakfast early, I am not particularly hungry.

Commissioner McFadden: Well, suppose we recess now and come back at 2:30.

Note: At this point a recess was had for lunch from 1:01, PM, Thursday, April 10, 1952, until 2:30, at which time the proceedings were resumed as follows:

Mr. Robinson: Mr. Miller has a few slight changes on page 1 of Mr. Henderson's letter about the acreage and I think he just as well read it into the record now.

Mr. Miller: In the first group, the South Carolina group, there should be added to that group, Civil 1073—Oh, he hasn't got the Civil numbers here either. F-541, and I would put P.T. after that part, because F-541 is a much larger tract by they have 5 acres.

Commissioner McFadden: What is the date of the taking?

Mr. Robinson: July 5, 1950.

Mr. Miller: Now, in the Georgia land that E-431 is .47 acres, cemetery tract, and should be taken out of this valuation, but as I told Mr. Robinson I wanted it included in [Tr. 364] the judgment to get rid of it. It is a track within 434 and it is only .47 acres. So the whole thing, E-431, comes out. Now, E-443, I am satisfied that this is a typographical error, that should be 4-27-51.

Mr. Robinson: That is the total. Does that change the total?

Mr. Robinson: The first one does not change the total. Now, this here does change the total. However, I have not really checked the totals, but we are together on all the tracts.

Q. (Mr. Robinson) Now, Mr. Henderson, I neglected to ask you before lunch about your educational back ground. Will you give us that? A. I was a member of the OA class at Clemson College.

Q. You also have a Master's Degree? A. I was conferred an Honorary Master's Degree by the College in 1928.

Q. That is by Clemson College? Yes, sir.

Q. You were a Member of the Board of Visitors up there at one time, weren't you? A. Yes, I served twice up there on that Board and was offered a light Trustee job but I couldn't take it.

Q. Mr. Henderson, have you been familiar with the lands we are talking about, the Savannah River Valley, and Price's Island the major part of your life? A. Yes sir. I have known the land for a number of years, and I have gone over and appraised other adjoining lands for about three years prior to the taking of this [Tr. 365] property in connection with the Georgia Power Company and other lands. In other words, I had to go across a lot of this property in order to get to some other stuff. I am perfectly familiar with it and was familiar with it before the appraisal started.

Q. You have also appraised other lands in this area of the Savannah River Valley? A. Yes, sir.

Q. Do you know anything about the history of this valley yourself, Mr. Henderson? A. Yes. I embodied that in my report, and I can cover that better by just reading this paragraph.

Q. All right. A. (Reading) "From 1900 to 1910, the Twin City Power Company purchased approximately 5770 acres of lands on the Savannah River, located in McCormich County, South Carolina, and ~~Lincoln County, Georgia~~, for power development and secured several permits to build a dam. About 1910 a railroad was built from Modock, South Carolina, to the Savannah River, a distance of two and one-half miles. The dam was to be located across the river at Price's Island and some dirt was moved, the cut in the face of the East bank or hill can still be seen. Also, some heavy rock that was dug up can still be seen. The railroad grades and fills are still well marked."

Q. Now, would you describe the valley as you have got it in your report? [Tr. 366] A. (Reading) "The lands purchased by the Twin City Power Company from the lower end of Price's Island to Chamberlain's Ferry, a distance of eleven miles up the Savannah River is the prettiest

scenery I have ever seen. There are six distinct water falls or shoals and a number of small islands, Price's Island being the largest and containing three hundred and eighteen acres. The banks of the river are steep and range from small bluffs to little mountains. All the shoals are covered by pictures recently made and are marked to show exact location.

From Price's Island to Chamberlain's Ferry, a distance of eleven miles, there is a fall of fifty-seven feet or a total of 44% of the one hundred and thirty foot dam at Clarke Hill being built by the Government.

The lands owned by the Twin City Power Company have three main uses, namely, (1) timber growing; (2) pasture and grazing; and (3) power development. In this appraisal I am not considering power value.

The entire property, with the exception of some timber along the river and Price's Island has been cleared. At the time of the Government's taking there was a good stand of young pine and some new timber, and considerable hardwood on the property. That represented at least one and three-quarters million feet of saw timber removed.

After carefully going over this property tract by tract and considering the various elements that make up fair market value, I am basing my appraisal primarily on: First, the [Tr. 367] adaptability of the bottom lands for the raising of various grains and for pasturage purposes and for the raising of livestock.

As has been pointed out, the lands in this area are exceptionally well adapted to timber growing, particularly pine timber. This section is recognized as the fastest growing pine timber land in the United States, and will grow an average of 15,000 feet of saw timber per acre every fifteen to twenty years, and from five to six units of pulpwood every five to six years.

Since cattle raising in this section of the southeast has been recently, and is now experiencing rapid growth, I consider the bottom lands along the river as being very valuable as pasture lands and in producing feeds, including grains of various types, and for cattle raising.

Q. Have you samples of the pine timber taken from this valley? A. Yes. We cut a lot of samples. This is three types of timber that we found growing on this property. Using extreme cases here, these blocks are a 25 year growth. This is very dense. It was at the side of a ditch where there was no soil much and the growth was very slow. Some of the higher lands where the growth was rather slow it ran so close together it would almost be classed as dense growth. This is seven years old and grew in one of those flats. It is slash pine, and you notice that the rings are very coarse and the growth is.

Mr. Robinson: We would like to make an exhibit of that but we do not care to put it in evidence.

[Tr. 368] Q. What kind of pine is that? A. This is slash pine and this is lob lolley.

Q. The two small are lob lolley and the large is slash? A. Yes, that is on the land where Blackwell owned approximately two thirds.

Q. Now, with reference to the Blackwell tract, if you will take January 3, 1950, as the taking date, taking Tract E-446—— A. —what date?

Q. January 3, 1950, as E-446, (check me on this), and the same date as to E-557, and July 13, 1950, as to E-449——

Mr. Robinson: Have you got them, Mr. Miller?

Mr. Miller: I don't have those dates here to check.

Commissioner McFadden: I don't even have a 557.

Mr. Robinson: I am sorry, it is E-457, and I think that is January 3, 1950.

Mr. Miller: That should be January 3rd.

Q. Let's use January, 1950, for E-446 and E-457. Now lets use July 13, 1950 for 449, E-449. The first two of the January dates apply to the larger tracts on this map? A. Yes, sir.

Q. And the second date to this tiny tract of 5 acres? A. Yes, sir.

Q. Now, will you go ahead with your report on those three? A. Now, tract E-446, containing 128.63 acres——

[Tr. 369] Commissioner McFadden: Which is that?

The WITNESS: Tract E-446.

Q. All right, go ahead. A. Tract E-446 contains 128.03 acres. Tract E-449 contains 5.51 acres. Tract E-457 contains 24.26 acres, making a total of 157.80 acres, and all of this is located in Lincoln County, Georgia, and owned jointly with Nettie Blackwell Estate, the Blackwell Estate owning a three-fifths interest and Twin City a two-fifths interest. This tract had good stand of growing timber, some still standing. My values and breakdown for the condemned area of the Twin City Power Company are as follows:

Land Value in McCormick County, South Carolina; 1605.81 acres. That was for the three tracts.

Q. There are really four tracts now because we have added the Harris tract of five acres? A. Yes, I didn't consider that in my report.

Q. I understand. 1305.81 acres of that is Upland with a good growth of young pine on which I placed a value of $85.90 per acre, which gave $136,493.00. I listed 300 acres in the bottoms as semi-cleared, in other words partially grown up. There is some hardwood on it, and I placed a valuation of a $100.00 an acre on that, making $30,000.00. That gave me a valuation on the South Carolina side of the lands of $166,493.00. Now, on that same land——

Mr. MILLER: Now, we object to that on the ground that the rule with reference to land like that and timber, particularly land like this, that is not primarily timber, it is proper to [Tr. 370] consider timber, the amount of timber, but the land should be as held by the Fifth Circuit Court of Appeals and others many times that it is not proper to value the land and timber separately and then subdivide it together. He should have the amount of timber taken into consideration and value it as a whole, and that is the rule and we object to it on that ground.

The WITNESS: I have always set up saw timber as a separate valuation from the land. I always included the smaller growth as a part of the land value and I have so set up my valuations that way.

Commissioner MCFADDEN: Go ahead.

The WITNESS: All right, a half a million feet of saw pine timber at $25.00 a thousand, $12,500.00. Three Hundred Thousand feet of hardwood at $15.00 a thousand $4,500.00, the total value $17,000.00.

Now the land values in Lincoln County, Georgia: 2908.82 acres, consisting of twelve tracts, which we have gone over, out of this 12 tracts we have already accounted for 157.80 acres of Blackwell lands, which land has been valued separately, or will have to be valued separately. The remainder, after taking off the Blackwell lands, leaves——

Q. There is a typographical error in there. I will give it to you in a minute; 2751 acres instead of 2851 acres. A. All right.

Q. That will also make a difference in your next figure. [Tr. 371] A. It will be 24——

Q. —23, I think it should be. A. 2341.

Q. That's right. A. 400 acres of this Georgia land is classed as bottoms land at $100.00 an acre or $40,000.00.

Q. How much? A. $40,000.00. That is 400 acres at $100.00 an acre. Mr. Robinson this——

Q. —I am making this addition. Go ahead. A All right. On the Blackwell lands we placed a valuation of $30.00 an acre of $11,156.00.

Q. That 2341 acres, if I calculated it right, multiplied by $80.00 an acre, comes to $187,280.00 instead of ——. A. $187,280.00?

Q. That's right. We had too much acreage in there. A. On this Georgia side we have 400,000 feet of saw pine at $25.00 per thousand, making $10,000.00, and 350,000 feet of hardwood at $15.00, making a total for the saw timber on the Georgia side of $15,250.00. The total value of the timber and land on the McCormick side is $183,493.00. The Georgia side would be 200 acres less. Do you want it?

Q. I will give it to you in just one moment. I have the Georgia side at $253,686.00. A. Then the other side—let's see (witness figuring) $437,176.00.

Commissioner MCFADDEN: Give me that again, please.

[Tr. 372] The WITNESS: If my figures are correct it is $437,176.00. We just took off the difference in acreage.

Mr. ROBINSON: We are poor mathematicians.

Q. Now, Mr. Henderson, is that your appraisal of the fair market value of the Twin City Properties? A. Yes, it is.

Q. If I understand you, that includes a three-fifths interest in 157.80 acres of land in which the Blackwell family owns three-fifths? A. Yes, I set up the Blackwell land and then you can divide it by the percentage of ownership.

Q. Then in calculating the Twin City Power Company's land the Commissioners should deduct three-fifths of the $11,156.00 which you put in for the Blackwell land? A. Yes.

Mr. MILLER: No. I understand that the Blackwell land is being evaluated separately and——

Mr. ROBINSON: I beg your pardon.

Mr. MILLER: Well, it don't have to be separated. It is an undivided interest and all we have to do is to divide it by——

The WITNESS: Well, I merely set it up separately so it would show the percentage of his ownership on a settlement basis. And you will notice that there is a slight difference in the valuation of the lands there on the South Carolina side, and the Georgia side. That is due to the topography of the area, less the hardwood on the South Carolina side then the Georgia [Tr. 373] side and the land value would be a little higher on the South Carolina side than are the Georgia side. That is the reason for the difference in valuation on the Georgia side and the South Carolina side.

Q. It is not because you live in South Carolina? A. No sir, it is jut a difference in valuation there.

Q. Now, Mr. Henderson, I also asked you to make an estimate on what it would have cost the Twin City Power Company, or some one who had acquired its lands, to obtain without the right of condemnation, by trading, additional lands in the valley, which were necessary for a development at Price's Island, lands that's on Exhibit 25 are colored in blue. I will ask you first, if you know generally the people in the valley? A. Yes. This area in here that shows——

Mr. Miller: I object to that as being foreign, irrelevant and an immaterial issue before your Honors.

Mr. Robinson: My purpose in introducing it is to show what it would have cost the Twin City Power Company, or a purchaser from the Twin City Power Company, to acquire the lands that it didn't own for this development as a basis for the figures which the engineers used in their estimates.

Mr. Miller: That would be incompetent. I object to it on that ground any way. I don't believe anybody could qualify as an expert to testify on that. If he wants to evaluate this land which is not in issue in this case, then I object on the sole ground that it is foreign and irrelevant [Tr. 374] and immaterial to any issue before us. It looks to me like you have got enough land to evaluate without evaluating lands that belongs to nobody connected with this litigation.

Commissioner McFadden: We will admit this, subject to Mr. Miller's objection.

Q. Mr. Henderson, did you go over that place and place your opinion as to what will have to be paid for that land, if we did not have the right of condemnation? A. Yes, sir. I looked at it on several occasions and I figured that it could be bought on an average of $150.00 an acre without having to use the right of condemnation.

Q. That is as of June 1947? A. As of June, 947.

Q. Why did you place a higher price on that than you do the Twin City Power Company lands? A. Well, I figured that if you just had to have that land today and go out there and ask the people to sell it to you, that you would have to offer them an inducement to get it.

Q. You would have to give a little premium? A. Yes, sir.

Q. Now, I also asked you to give me an approximation of the value in the railroad strip, which totals 5.8 acres, and it is made up of a 30 foot strip a distance of a mile and a half or two miles long, as marked in red on Exhibit 25 near the dam site. Can you give us a value on that, Mr. Henderson?

Mr. Miller: Our objection runs to the line with respect to the title on that.

[Tr. 375] Commissioner McFadden: Yes, sir.

Q. Can you give us an estimate of the value of that? I realize it is difficult, but nevertheless, I would like to have it, if you can. A. That smaller strip cutting right through a piece of property would cost more money than just buying an acreage strip. You might have to pay as much as 4 or $500.00 just to get that narrow strip for a 30 foot right-of-way.

Mr. Miller: I object to that for the reason the Twin City Power Company owns a railroad easement, or fee simple to a tract of land 30 feet wide and two miles long, or whatever it is. They don't have to acquire that, and it should be valued, if at all in this case, it should be valued on the basis of the shape it was in at the time they had title. If it is for power value, that has already been evaluated, if any power value is assigned to it. I think your Honors will find that the railroad has been abandoned, and the only thing there now is a strip of land. The only thing they own there now is a fee simple strip of land after the railroad is gone. They owned a strip of land 30 feet wide and two miles long, and the question would be, if it is an issue here, the value of that land as it stood on the date of the taking. I don't think it is competent enough to go into the date of taking, but whatever the date of the taking was, it would be the value of that strip of land in that shape and character on the market being sold as such.

Q. All right, suppose I just ask you as of June, 1947, [Tr. 376] what would you say the value of that 30 foot strip, containing 5.8 acres? A. Well, as long a strip, as that, 30 feet wide, I would say about $1500.00.

Q. $1,500.00? A. Yes, sir.

Q. Now you, in your appraisal, gave a different value to bottom lands than you did for higher lands? A. Yes, sir.

Q. Will you point out, first, the 300 acres of bottom lands in McCormick County, South Carolina, where it is located? A. Yes, sir.

Q. All right. A. Here is a part of tract F-500, showing this area right here. (indicating on map)

Q. That is near the river and the creek bottoms? A. Yes, and you have got a big area going up Catfish Creek, right here. There is a big wide bottom there. Then we have got a smaller area here.

Q. That is also in tract F-500? A. Yes, and there is a big area in this block here, H-700.

Q. How much would you say the acreage is in H-700 of the total of 300 acres? A. Approximately a 100 acres of low land in this area up to this point here, and then you have got a good block of low land right here, about 25 acres up here in this last tract.

[Tr. 377] Q. In H-732 you placed 25 acres? A. Yes, sir.

Q. And how much in H-700? A. This is all in H-700, about a 100 acres.

Q. About a 100 acres there? A. Yes, sir

Q. And the rest of it in F-500? A. Yes, sir, in these two areas here.

Q. That is all designated as F-500? A. Yes, sir.

Q. So that is 175 acres in bottom lands? A. Yes, sir.

Q. A 100 acres in H-700? A. Yes, sir.

Q. And 25 acres in H-732? A. Yes, sir.

Q. Now, you had 400 acres — A. on the Georgia side.

Q. On the Georgia side? A. Yes, sir.

Q. Now, where did you say that was? A. Price's Island is an excellent piece of property from a grazing standpoint or farming standpoint. It's very rich. I considered that whole bottom here.

Q. That is F-439, Price's Island? A. Yes, sir.

Q. Now that whole Island, Mr. Henderson, was included? A. Yes, sir.

[Tr. 378] Q. And that is 328 acres? A. Yes, sir.

Q. Now, you have got 75 more acres, where did you put that? A. In this area right here, where it comes back from the river bank.

Q. That's E-434? A. Yes, sir.

Q. In E-434 about 72 acres and E-439, 328 acres. That covers it? A. Yes, sir. If you will notice this tract here, (indicating on map) This is a very steep bluff here, and

the bluff runs right down to the water and you haven't got any bottom there (that's the reason I didn't take it in). You have to step from one rock to another to get down to the water, and so is this tract here, it runs way down here, and this one here. You haven't got any bottom in that area there.

Q. Now, Mr. Henderson, except for those bottom lands, your value per acre is the same all the way across? A. Yes, all the way across. And there is $5.00 difference, I believe, in my valuation on the upland valuation on the Georgia side and the South Carolina side.

Q. You can take your chair again. Now, I want to ask you one more thing; in tract H-703, which is the Annie Robertson land on the South Carolina side, I haven't asked you to include it in the other valuations, but it may be contended by Twin City that they own 40 acres in fee of that land, a strip along the river, and I would like for you to [Tr. 379] value that 40 acres for us. That's almost all bottom land and it would carry a valuation of a $100.00 an acre.

Commissioner McFADDEN: Is that H-703?

The WITNESS: Yes, sir.

Mr. ROBINSON: Now, we don't have it in fee there at all. Our position on that is the government and Twin City are apart. The government's position is that this is covered by our option to buy valid or invalid. Our position has been that 40 acres of it is in fee, but because of that uncertainty we did not ask him to include it.

Mr. MILLER: How many acres?

Mr. ROBINSON: Forty acres.

Q. Now, Mr. Henderson, you said that you had placed your valuation in part upon the usefulness of this land for growing pine timber? A. Yes, sir.

Q. And I believe you gave us the rate of growth of the pine timber in your written report? A. Yes, sir.

Q. Now, can you convert that into dollars per acre per year for us for pine growth?

Mr. MILLER: I object to that on the ground that capitalization of the growth of pine timber has been held incompetent by all the courts. The witness's valuation of that land on that basis, I will find out later, but I move to strike the question on the grounds that it is irrelevant, immaterial and the most rankest speculation, because he can't testify as to [Tr. 380] timber lands or the growth of timber in the future.

Commissioner MCFADDEN: I sustain that objection because it takes in the future, a contingency that no one can foresee.

Mr. MILLER: I was going to ask him on cross examination if he did that.

Commissioner MCFADDEN: Well, of course, we will cross that bridge when we get to it.

Q. I will just develop the facts. Now, Mr. Henderson, as of June, 1947, what was the value of saw timber on the stump? A. That depended on the quality of itself.

Q. Well, the saw timber of the character that was growing on this land? A. We were dealing with that timber, and that timber was worth, approximately, it would range from 20 to $25.00 an acre. I mean per thousand at that time.

Q. Now, by July, 1950, what was the price of the same kind of timber? A. It was worth fully $25.00 per thousand then, because it had advanced.

Q. In other words, there had been an increase in value from the middle of 1947 to the middle of 1950? A. Yes, sir.

Mr. ROBINSON: The witness is with you.

CROSS EXAMINATION

[Tr. 381] By Mr. MILLER:

Q. Mr. Henderson, in reaching a value of $85.00, did you take the growth per acre per year and capitalize that and use it as a method of arriving at the $85.00? A. No, sir. It was from a long experience in handling timber and growing timber and appraisal of timber. I considered that

as one of the factors, other than the growing of live stock, but I didn't figure it down to a capitalistic point.

Q. When did you actually go upon this land to make your appraisal? A. Well, I started looking at this property in April, 1951, and I completed my report on May 20th. I spent seven or eight days on this piece of property during that time.

Q. The value has been rising out there from 1947 up until the present time? A. Yes, sir.

Q. There has been a steady rise? A. Yes, sir.

Q. And you took that into consideration in each tract and each date you gave us? Is each tract valued as of its date there? A. I figured the value of this property as of the date of taking, and those taking dates there varied a little. Each tract, when I made up my report I figured the price I put on it was the fair market price of the value of the property as of the date from the beginning to the end of [Tr. 382] the period. In other words, the average of the taking period.

Q. You divided in classes Well, all right, I am not too interested in that no way about that valuation. How many acres on the uplands, the land you didn't call bottom land, how many acres on the South Carolina side you figured it all was clear? A. Well, when this inspection was made there was possibly 75 per cent of it clear at that time, but I had known this land for three or four years, had been travelling over it.

Q. Seventy five percent of it clear at that time? A. Yes, sir.

Q. You inspected it after the Army Engineers had been out there and cleared it? A. What's that?

Q. Did you inspect it after the Army Engineers had been out there and cleared it? A. Possibly they were clearing it at that time.

Q. Well, as of the dates of the taking on these lands on the South Carolina side of the River, do you know how much was cleared and how much was not? A. As of the dates of taking?

Q. As of the dates of the taking? A. No, there wasn't any of it cleared until the basin was begun to be cleared out by the contractors and engineers.

Q. As of the dates of taking in each one of these cases on the South Carolina side of the river, there was no cleared [Tr. 383] land? A. No, sir, nothing—they still had the growth there. The clearing was done by the engineers.

Q. Well, in arriving at your valuation, did you take into consideration the clearing that had been done by the engineers? A. What?

Q. Did you take into consideration the clearing that had been done by the engineers after the dates of taking? A. When I inspected the property, I went over it and looked at the timber standing, the sawdust piles and stumpage, and the timber that had been removed, what part had been removed.

Q. Tracts E-434 and E-439. Now, do you have the date of valuation and the date of taking down there, of June 19, 1947? A. Yes, sir.

Q. When were you on this property with respect to that date? A. I began to appraise this property in April or May, 1951.

Q. Well, did you know the condition as of June 19, 1947? A. Yes, I had been going over that property for three or four years, up and down there for the Georgia Power Company.

Q. Well, at that time, how much of that was cleared? [Tr. 384] A. What?

Q. At that time, how much of that was cleared? How much was cleared at that time, if any? A. There wasn't any cleared when I first saw this land. There wasn't any of it cleared by the Engineers.

Q. Then, on the South Carolina side, you cut off this merchantable timber? A. Yes, sir.

Q. Then what you have on all of these tracts on the South Carolina side as of the date of the taking is grown over, or cut over timber land? A. Yes, the saw dust piles there were fresh.

Q. What I am asking you about, Mr. Henderson, and I am not trying to worry you, because I think you are familiar with this land know what it was before, but if you just knew about this land what you saw when you were out there as of the date of the taking I want to strike your evidence. What I want to talk about now is the condition of this land as it was before it was touched, either damaged or improved, by the Army Engineers, after the United States taken it, its natural condition. Now, as I understand your evidence, as of that time involved cut over timber land with the exception of the merchantable timber, which you have listed here in your appraisal? A. Yes, sir, there was still this amount of timber there.

Q. There was the amount of timber there that you listed? [Tr. 385] A. Yes, as of the date of taking.

Q. And the rest of it was all cut over? A. All the whole area of timber had had some of the timber cut in prior years.

Q. Well, now, on the South Carolina side, in McCormick, South Carolina—I mean in McCormick County, South Carolina, on all the land you found 500,000 feet of saw pine and 300,000 feet of hardwood? A. Yes, sir.

Q. Now, if that was sold and cut off that land what you would have left altogether on the South Carolina side would be the cut over woodland with no merchantable timber on it? A. Yes, but it would have a good growth, a good stand of pine from 10 to 15 or 20 feet high and ranging in size from six inches on down.

Q. You didn't take into consideration the pulpwood out there? A. No, sir, but I stated in my report that there was a good growth of young pine on the land.

Q. Now on the Lincoln County Georgia side there was some cleared land, I believe, as of the date of taking, not considering what the Army Engineers did?

Mr. Robinson: If you will use the term "open land" I think he will understand you better.

Q. Open land. I mean cleared land and put in crops and pastures? [Tr. 386] A. The Georgia side did not have

much timber per acre as the Carolina side, as I have shown here in my report. It had been cut close.

Q. The timber on the Georgia side had been cut close? A. Yes, sir.

Q. How much of this bottom land did you put a value of $100.00 an acre on, this farm or pasture land? A. Well—

Q. —how much of that was cleared? A. Those bottoms, some of them were cleared out. I would say that a fourth of them had been worked in just a few years.

Q. How much bottom land did you find altogether? A. I listed 300 acres on the South Carolina side, and—

Q. —well, let's stick to the South Carolina side. A. All right.

Q. There were 300 acres on the South Carolina side? A. Yes, sir.

Q. None of it was cleared, I believe you said? A. 300 acres on the South Carolina side was semi-cleared. I would say that a fourth of that could be classed as open or land with a little briers and bushes on it, what people usually class as open pastures.

Q. How long would you say it had been since that 300 acres—you say a fourth of this 300 acres was semi-cleared? [Tr. 387] A. Semi-cleared, yes sir.

Q. A fourth of it, that would be approximately 75 acres? A. Appproximately, yes.

Q. Semi-cleared? A. Yes, sir.

Q. How long would you say it has been since that 75 acres had been farmed? A. Maybe ten years.

Q. Now, on the Georgia side you gave, how many acres were cleared land? A. Well, there were 400 acres there and 300 acres were in Price's Island.

Q. How much of Price's Island was cleared? A. Just a little bit, just two or three openings there, two or three little openings on that, but the hardwood growth there had grown up where it used to be cultivated.

Q. Well, there was cleared land on Price's Island? A. Yes, some.

Q. Some cleared land on Price's Island? A. Yes, sir.

Q. About how many acres? A. What?

Q. How many acres would you say? A. I don't know just how many acres, but just a small amount.

Q. The balance of that—Now, that bottom land on [Tr. 388] the Georgia side totalled 400 acres, and 300 acres were on Price's Island? A. Yes, sir.

Q. The balance of that 100 acres, how much of it had been cleared? A. There would be just a small amount of that semi-open, but I would say maybe 25 acres, something like that, 25 or 30 acres.

Q. Now, the pasture— — A. —some bushes and briers growing over it.

Q. Now, this pasture and grass land, take land that's grown up in the woodland for ten years and maybe a good deal longer, did you take into consideration how much it cost to clear land like that? A. Well, semi-cleared stuff you can clear it very easy, but where it has got heavy timber on it it will cost you around $100.00 an acre to clear it.

Q. A $100.00 an acre top, down to what? A. Well, $10.00 an acre for that semi-cleared or brushy land.

Q. Well, did you strike any average as to what it would cost to clear this land for crops and pastures? A. No, I didn't. I don't think it would cost over half though.

Q. Now did you—There is no paved road access to any of this property? A. No, but there are two ferry roads— —

Q. —well, we know about them? [Tr. 389] A. No paved road, no sir.

Q. No houses or anything back in there? A. No, no houses or anything back in there.

Q. Did you take into consideration comparable sales? Did you know about any comparable sales in that area? A. No, not particularly on this tract. We had a few years ago, back in 1913, comparable sales of land down on Stephens Creek— —

Q. I am talking about if you know of specific sales in McCormick County, South Carolina, of lands you consider comparable to the upland, cut over pine land, pasture land, leaving out the bottomland, that sold for as much as $85.00

an acre, or $80.00 an acre, I would like to have the names and the dates? A. Well, you can go to the clerk's books in McCormick County, South Carolina, and check the sales.

Q. Do you know of any? A. Yes, I am telling you now. You can go to the records of McCormick County, South Carolina, and check the sale of lands of Dern Brothers, or Blackwell, and you will find that those lands have been transferred in the last two or three years from 45 to $75.00 an acre.

Q. From 45 to $70.00 an acre transferred within the last four or five years? A. Yes, sir.

Q. Now, specifically what have you—Can you give us specific examples of lands that you think are comparable [Tr. 390] to your cut over uncleared land at 45 to $75.00 an acre, or at any price? A. Well, sir, I have appraised a lot of comparable lands but I haven't got it here now. It is in another file, on some other property, and again it is those records that I am calling your attention to.

Q. Do you have any sales of cleared crop lands, that's specifically, that you can call my attention to, that sold, as of the date of these takings, and I will open the door right up to the past four or five years to date, that sold for a $100.00 an acre? A. You mean in the McCormick area?

Q. In McCormick County, South Carolina, or in Lincoln County, Georgia, either one? I will just open the door. A. I will have to check to get the information to recall it and certain cases to prove it.

Q. Would you say that this was back of the date of the taking you taken me out on this property and quote those prices to me as a prospective purchaser of that property, and I came back and looked at the papers and found that reputable real estate men, such as H. Gould Barrett, advertising in the paper lots of 2000 acres and 500 acres of well improved lands, some of it on the road, some in grass lands, with improvements on it like from $40.00 to $65.00 an acre, do you think I would go out and investigate that before I paid that for this property off of the road and overgrown? [Tr. 391] A. Well, I tell you, it took me about 60 years to find that land didn't have but two uses in this-

country and that's timber growing and pasturing, and this is the fastest timber growing area in this country.

Mr. Miller: No further cross examination.

REDIRECT EXAMINATION.

By Mr. Robinson:

Q. Mr. Henderson, he asked you about the sale of property down at Stevens Creek, the property you have got in mind down there is a part of the dam site of Stevens Creek? A. Yes, sir.

Q. What was that sale? A. It was a case involving 42 acres of land on the South Carolina side of the river——

The Reporter:—talk out louder, please sir.

The Witness: It was a case involving 42 acres of land on the South Carolina side of the Savannah River—what's official title of that dam? Well, I will call it Stevens Creek, when it was built in 1913, it sold for——

Mr. Miller: I object to that. That was back in 1913 and is not comparable. I did throw the door wide open for the past five years, from 1947, right on up to date to sustain his figure. A sale on yesterday would be all right, but to compare the sales back in 1913, which under the peculiar cir- [Tr. 392] cumstances that can't be checked, is utterly incompetent.

Mr. Robinson: Mr. Commissioners, we are talking about the part of the dam site. Now, you don't sell dam sites or power sites as counsel tried to develop on his cross examination, everyday. Now, here is a sale of a part of a dam site on the dam which is nearest to the one we are talking about today, and if that is a sale without the right of condemnation it has some bearing on the value here, and I think the witness ought to be allowed to testify as to what that value is.

Commissioner McFadden: In this case, Mr. Robinson, I think his objection should be sustained for this reason: This witness is testifying as to value, as I understood from him, he said he was testifying separately and apart from

the power site value, and consequently I don't think, in support of his valuation of a $100.00 or $80.00, or whatever it is, what some brought at Stevens Creek in 1913, for power purposes, would be competent.

Mr. Robinson: Not in support of his agricultural value testimony, but in support of our power value item. One is a recorded sale.

Mr. Miller: Well, strictly for power site purposes, if we are going to talk about power site purposes, I will open the door to that and let the evidence go in as to sales listed in their book, but I will want, when the time comes for my evidence, I will want Mr. O'Connor back here for a brief examination.

[Tr. 393] Mr. Robinson: Mr. O'Connor expects to be back for the hearing, or before it is concluded.

Commissioner McFadden: By consent of counsel for the government this evidence is admitted for power site purposes, valuation.

Q. What was that sale, Mr. Henderson? A. This sale was made in 1913, and is recorded on the records of Edgefield County, 42.67 acres was sold by Fleming, Berdery and Andrews to the power people.

Commissioner McFadden: For how much?

The Witness: $45,000.00.

Mr. Miller: What power company?

The Witness: What is the official Georgia Power Company?

Commissioner McFadden: The Georgia Power Company.

The Witness: The Georgia Power Company.

Mr. Robinson: Georgia-Carolina Power Company.

Q. Mr. Henderson, is there any appreciable difference in the value of this land between the date of the first taking of June, 1949——

Mr. Miller: ——just a minute. Well, that's all right.

Q. —— any appreciable difference in the value of this land you valued for Twin City between the date of the first taking in June, 1947, and the date of the last taking, which, I believe, was about July, 1950?

A. No sir, on the whole it was just about the same. There was a slight increase on the last, or a little lower on [Tr. 394] the 1947, of the overall average values that I have tried to reach.

Mr. Robinson: That's all.

Recross examination.

By Mr. Miller:

Q. On this Stevens Creek sale, what was the date again? A. You say the seller?

A. Yes. Well, we have got that. What was that date again? A. Fleming, Berkerly and Andrews were the owners to the Georgia-Carolina Power Company.

Q. Yes. Are you sure that's the correct name of the purchaser? Have you got the date of the recording of the deed there? A. No, I have not.

Q. You have not? A. No, sir.

Q. Now, I want to open the door once more. I am talking about the pastures, well I will group it all together, the pasture land, farm land or grazing for the past five years in Lincoln County, Georgia, and McCormick County, South Carolina; can you give us a specific sale as high as 85 or $100.00 an acre, at any figure, or any figure that you can recall? [Tr. 395] A. Well, I tell you, I didn't check that. I saw these sales of these other lands in McCormick, in a book, but I would have to check back to see the property. I couldn't tell off hand whether——

Q. —I want to know if you know of a particular sale? A. No, sir, no particular sale.

Q. You say you have seen the property that is comparable? A. What?

Q. You say you have seen the property and that it is comparable, in your opinion? Now, will you give us the name and date so that we can check it? A. No, sir; I can't.

Q. You can't? A. No, sir.

Mr. Miller: That's all.

Commissioner BARRETT: You said that a considerable amount of this land, this timber land, in McCormick County, had been cut over about ten years ago?

The WITNESS: Yes, sir.

Commissioner BARRETT: Do you know how much timber was cut and who received the proceeds from the sale?

The WITNESS: I don't know, I couldn't say.

Mr. ROBINSON: The Twin City cut it several times during the ownership of the property.

Commissioner McFADDEN: Let me ask you this, Mr. Henderson, [Tr. 396] because my notes would not keep up with your testimony. Looking at your Georgia lands for a minute; now, as I take it, those three tracts, E-446, E-449 and E-457, containing 128.03 acres, 5.51 acres and 24.26 acres, in which joint ownership is between Twin City Power Company and Blackwell, you evaluated it at $70.00 an acre, making a total of $11,556.00, is that right?

The WITNESS: Yes, sir.

Commissioner McFADDEN: And that includes timber and everything?

The WITNESSS: Yes, sir.

Commissioner McFADDEN: Now, then, you said that there was in all the rest, the remaining part of the Georgia land, that there were 400 acres of bottom land, which you valued at $100.00 per acre, making a total of $40,000.00, is that correct?

The WITNESS: Yes, sir.

Commissioner McFADDEN: Now then, as I understood you further, you evalnated the pine timber at $10,000.00, is that right?

The WITNESS: Yes, sir, that's right.

Commissioner McFADDEN: And the hardwood timber at $5,250.00, making a total timber valuation over and above and in addition to the land valuation?

The WITNESS: That's right.

Commissioner McFADDEN: Of $15,250.00?

The WITNESS: That's right.

[Tr. 397] Commissioner McFadden: All right. Now, I never did get--You put a valuation of $80.00 per acre on the remaining portion of the land, is that right?

The Witness: Yes, sir.

Commissioner McFadden: $80.00 per acre on the remainder, and that amounted to how much?

Mr. Robinson: $187,280.00.

Commissioner McFadden: $187,280.00? And to that you added the $40,000.00 for the bottom land?

The Witness: Yes, and the Blackwell lands.

Commissioner McFadden: And you added $11,556.00 for the Blackwell lands, and $15,250.00 for the timber, is that right?

The Witness: Yes, sir.

Mr. Robinson: Any further question by the Commissioners?

Commissioner McFadden: I have none.

Mr. Robinson: Mr. Miller?

Mr. Miller: No.

Commissioner McFadden: Gentlemen, lets take a short recess.

Mr. Robinson: All right, and we have one more short witness.

Commissioner McFadden: Well, lets take a recess for about five minutes.

Note: At this point the proceedings were recessed for about five minutes from 3:55, PM, to 4:00, PM., of the same day, at which time the proceedings were resumed as follows on the next page.

[Tr. 398] Mr. B. R. T. Todd Sworn for the Twin City Power Company Testified as follows.

Direct examination

By Mr. Robinson.

Q. Mr. Todd, will you give us your full name and address? A. Benjamin Rive Tillman Todd, Laurens County, South Carolina. (Laughter)

Mr. MILLER: Can I have your initials, please?

The WITNESS: B. R. T. Todd. Three initials.

Q. Where did you say you lived Mr. Todd? A. Laurens County, South Carolina.

Q. What is your education, Mr. Todd? A. Well, I was educated in the public schools of Laurens County, Clemson College, and the United States Naval Academy, Annapolis, Maryland.

Q. Did you graduate either at Clemson or the Naval Academy? A. No, sir. I only attended Clemson one full year, and then three years at Annapolis.

Q. Did you stay in the Navy some after you attended Annapolis? A. No, sir, on account of a physical break down when we graduated I wasn't allowed to continue in the Navy.

Q. After you left the Navy, what was your business [Tr. 399] or experience, Mr. Todd? A. Well, for four years, until the first of 1913, I was in the engineering department, first, with the Southern and then the Seaboard Railroad. At the beginning of January, 1913, I went back home, Laurens County, to my little farm and set up an engineering office, dealing in real estate. I was in that until 1928, with the exception of about three years in World War One.

Q. Were you in the Navy or the Army at that time? A. In the Army.

Q. After 1928, what did you do? A. I was with the Federal Land Bank of Columbia, the Farm Credit Administration.

Q. In what capacity? A. I served in several capacities, but principally as an appraiser and seller of real estate, farm lands.

Q. What rank did you obtain in the appraisal field? A. I was at first, the first of May, 1933, senior land bank appraiser appointed in this district, North Carolina, South Carolina, Georgia and Florida, after the grade of Senior land bank appraisal was established under the Civil Service Commission.

Q. During your period with the Federal Land Bank, did you stay in this District, which included South Carolina, all

of your time, or were you in other parts of the country? A. My headquarters were in South Carolina all the time. I covered and did work in all four states.

[Tr. 400] Q. How long did you continue with the Federal Land Bank? A. Until the first of 1948, when I retired under Civil Service.

Q. During that time with the Federal Land Bank, did you do any appraisal work for other Federal Agencies? A. Oh, yes, sir. I appraised quite a lot of property for the Joint Stock Land Bank during that time, and immediately after the collapse of the banking system of our country in 1933 I appraised quite a few farm properties that were held under mortgages to the National Banks, and I appraised, beginning in December, 1940. I think it was December, 1940, that I was sent to Spartanburg to Camp Crawford. I personally appraised 52 per cent of the property at this Camp for the Army.

The Reporter: Is that Crawford or Croft?

Mr. Robinson: Camp Croft.

The Witness: I personally appraised, as I said, 52 per cent of the property at Camp Croft for the United States Army. I appraised all the property, each and every tract, at the Air Base at Greenville. I appraised all of the property at the air field that was established at Spartanburg. The commercial airport was taken over there, and also all the property that was taken over of the Commercial Airport at Greenwood in addition to the other. I looked at each and every tract of the air base, airport, that was established at Greenwood, South Carolina, and also at North, South Carolina, also at Columbia, Lexington County, The Columbia Air Base, we call it, [Tr. 401] and numerous others. There were so many I can't recall them all just now. I appraised, or assisted in the appraisal of numerous other camps. There was one other camp at Monroe, North Carolina in the bordering county of Chesterfield, South County. I appraised each and every tract in that one.

Q. Does that complete your experience on appraisals? A. Well, there is one little incident that might bring out

what you are driving at. In 1942, I had already reached the retirement age, and I was asked to remain on during the emergency, on account of the emergency, and in 1942 I was called and asked to go to Louisiana to appraise a railroad there.

Q. Were you called by the Federal Government on that? A. Yes, sir, the Army Engineers. I didn't feel like leaving my little farm and going out there at that time, which would take about a month or six weeks away from home, and I refused, and within about an hour after I had told them I would not go, Washington called me, the Washington Office, and then they called again, and I had told them that I did not understand why they would have to take me from this District when they had districts between here and there, and then one bordering Texas, the Federal Land Bank District, and they had to call on me to go away from home to do that work. He called back and said they had canvassed the whole Eastern District and that I was the only man that he had available that he thought could do the [Tr. 402] railroad appraisal.

Q. Did you do it? A. Yes, sir.

Q. Now, since 1948, what have you been doing, Mr. Todd? A. Farming.

Q. Farming? A. Yes, sir.

Q. Do you live on a farm? A. Yes, sir.

Q. Do you agree with Mr. Henderson that there are only two good uses for a farm, one is cattle and one is pine timber? A. One is to rest. (Laughter)

Q. Now, at our request, did you appraise the Twin City Properties which have been described by Mr. Henderson? A. Yes, sir.

Q. Are you familiar, generally, with the valley there? A. McCormick County has always been in my district.

Q. And you from a time to time appraised property there? A. Yes, sir; in McCormick County I was thoroughly familiar with it. I have done quite a bit of appraising in Georgia, but not nearly so much as across the river on the McCormick side. I think I am justified in saying that I am thoroughly familiar with the district.

Q. You understand the dates in which the various [Tr. 403] tracts were taken in this case? A. Yes, sir.

Q. I would like for you to give us your appraisal of the value of this land.

Mr. Miller: May if please the Court, I think it first should be brought out that the witness had been on the property at the time of the taking, or had been familiar with the particular farm, or farms, before the date of the taking. I think it should be shown first that the witness had been on the property at the time of the taking, or that he was thoroughly familiar with the particular property he is fixing to give an appraisal on. It is in evidence that the first time it was taken over it was cleared and I think that should be brought out, that the witness is familiar with the conditions. It is true that the witness says he is familiar with the property but whether he had been on the particular property before the date of the taking or was thoroughly familiar with the condition of the property has not been brought out.

Commissioner McFadden: Well, isn't that a matter for you to bring out on cross examination, Mr. Miller?

Mr. Miller: Well, I think it goes to his competency to give a valuation on direct examination. The courts have held that he should be familiar with the property and the conditions at the time of the taking, and I don't think at the time of the taking he had been on the property before that, sufficiently before, to tell what timber was or was not there. What I am trying to get clear is I think it would be sufficient if it should appear in the record, before he gives his valuation, or [Tr. 404] his appraisal, that he knew this property and its condition before it was changed by the U. S. Engineers.

Commissioner McFadden: Well, I think that is entirely up to counsel to bring that out.

Mr. Miller: Well, I object to it on that ground.

Commissioner McFadden: Objection is overruled.

Q. Mr. Todd, when did you make your actual inspection for the purpose of testifying? A. In January, 1952.

Q. Prior to that time, had you been over the area from

time to time? A. I couldn't say positively that I had ever been on any particular tract of this Twin City Property prior to that time.

Q. In your appraisal, are you putting in any timber value? A. No, sir; I am not.

Q. Was there any evidence there, when you went on the property, to indicate any change other than the cutting of the timber from the property in prior years? A. No sir, the large majority of the property was clear when I went there.

Mr. Miller: That was cleared by the government, and I think it should be brought out, if he understood it, and did not evaluate this property as cleared land. I think that should be cleared up.

Q. You understand that the United States Government did the clearing? [Tr. 405] A. Yes, sir.

Q. What was your appraisal of the property, Mr. Todd? A. I appraised the property, originally inspected the property, I will say, at an acreage according to a certain map that I had, and in arriving at these values I must say that when I was there it was impossible to distinguish any tract line. The property had practically all been cleared except some higher ground and just judging by the evidence of what was there I put a value on the property, as a whole, at $441,948.00.

Mr. Miller: Unless that is related to the date of taking and made clear as to the date of taking it is incompetent.

Commissioner McFadden: I understood him to say, sir, that he was appraising it as of the date of taking.

Mr. Robinson: That was the question I asked.

Q. Did you place the same acreage value on the Georgia lands as you did the South Carolina lands? A. Yes, I did.

Q. Did you make a separate appraisal of the Blackwell lands, or not? A. Well, I inspected the Blackwell land along at the same time and the same day I was inspecting the other. I made a separate calculation in that I calculated two fifths of the Blackwell tract as being Twin City

Property and three-fifths as being the Blackwell estate property.

Q. In this total of $441,948.00 have you included all of the Blackwell land, or only two fifths of it? [Tr. 406] A. Only two-fifths of it.

Q. Only two fifths of it? A. Yes, sir.

Q. I think we need to get your valuation of the Blackwell land so we can calculate the other three-fifths. At what acreage value did you put on it? A. $100.00 per acre.

Q. $100.00 per acre? A. That's right.

Q. Then, in order to include that, we should add $60.00 per acre for the Blackwell land, as I understand, that is the three fifths interest since you—— A. —If you include the entire Blackwell land. Yes.

Q. Mr. Todd, what, in your opinion, is that land chiefly valuable for, laying aside the water value, the water power value, entirely? A. Well, Mr. Robinson, in all of my experience, it is a matter of trying to arrive at the market value in a case of this kind. There are different valuations, as we interpret them in appraisal work. The basis of all is the agricultural value. Then you have a normal agricultural value, and a present day agricultural value, which are governed entirely by agricultural commodity prices, or returns to the farm, to the property through operation. As I said, this is considered the basis. You have then commercial value, or market value, present day market value which, for instance, would be very much higher than normal market value, as we indicated, or pre-war market value, as back in 1930, 31 and '32, present day [Tr. 407] market value, and trying to arrive at a fair and just market value for the same you try to take into consideration all the purposes for which that land might be used. You take into consideration similar, for instance, since the early 1900—probably you don't recall so well as I do, the establishment of hydro-electric dams on the Catawba River in 1905-1907, and then on into the early twenties and late 'teens, Lake Murray, then Buzzard Roost and Santee Cooper all have made certain impressions upon the values of lands bordering upon river potential power

value. I know nothing of hydro-electric values but I do have to take into consideration in trying to arrive at a fair market value the reflections from those things upon the case I am considering.

Q. Now, looking at it from an agricultural value, what, in your judgment, is the best use of this land as of the date of taking, that is, between July, 1947, and July, 1950? A. Well, there were some very good bottoms on the property, something in the neighborhood of 700 acres was my estimation, and that land, had it been cleared—now when I looked at it it was cleared, but there is evidence that it was not cleared prior to the taking, but had it been cleared and utilized for the purpose for what it was best suited, which would be grass farming or grain farming or cattle raising, and it could easily, properly seeded, be put in usable condition for that purpose, for those purposes, it would easily demand a price of around $200.00 an acre.

[Tr. 408] Q. But as far as you could see, it wasn't in that condition? A. It was not, and it would have taken considerable money to clear it and seed it. Take, for instance, clearing, I couldn't say, down to a finite point, what it would take to clear this land. I know about what it takes for me to clear land from past experience, and what it takes for my neighbors to clear land, and I have an idea what it takes for the government to clear land and somewhere between those two extremes would be my estimate of the cost of clearing.

Q. Now, the lands not in the bottoms, what agricultural use you think they could be put to? A. Tree farming almost entirely.

Q. Now, what kind of trees? A. Pine trees.

Q. You wouldn't grow hardwood there? A. No, sir.

Q. Is that section adapted for pine growing? A. Yes, very specially so. The nature of the soil, all the upland soils in that whole vicinity, or practically all, predominately, elements and soil, with some spots of other soils, which are recognized as very fast pine growing lands.

Q. How fast—how much would pine grow per year on that property? A. Well, an average, on an average. I

would say, about 800 feet of saw timber and say two units of pulpwood per year, but in considering almost any boundary of lands, not [Tr. 409] that size, but foreign size, you have got to throw out 20 to 25 percent, which will not come up to standard, in other words, sub-marginal lands.

Q. Now, as of June, 1947, what was the price of pulpwood that you used?

Mr. Miller: I object, unless he gives the price of pulpwood as a part of his overall breakdown, his breakdown of his overall valuation. It has not been shown that he took into consideration the unit pulpwood cost on this. If he puts this pulpwood pine in and then figure on what it would be a few years hence that would be highly speculative.

Commissioner McFadden: Now, as I understood Mr. Todd's testimony, he said he was not taking into consideration the timber at all in the value he put on this land, is that right, Mr. Todd?

The Witness: Not the timber on that land. I did not try to estimate the timber that was on the land.

Commissioner McFadden: Did you estimate the pulpwood at all?

The Witness: No, sir.

Mr. Miller: That being true, his unit price of pulpwood would be utterly immaterial.

Mr. Robinson: Mr. Commissioners, my purpose is to have Mr. Henderson testify, and it's already in the record, that this land was growing pulpwood at the time of the taking. Now, since that's in the record it doesn't make any difference whether this witness put it in the record or some other witness, I am merely trying to get the price of pulpwood from this witness.

[Tr. 410] Mr. Miller: If he wants to put this in subject to another witness and value the land as a whole, all right, but certainly the valuation of the land and timber is utterly improper except for the purpose of real estate men who want to use it in connection with the valuation of the land as a whole.

Commissioner McFadden: I think his testimony here is that this land was suited for two things, one for grazing

or pasture or grain growing and the other for what you call timber raising, growing crops of timber. Now, to that extent the value of the growing timber, the value of the crop of timber would be competent. We will admit it for that purpose.

Mr. MILLER: For the purpose of showing that and being connected up by some other witness or witnesses.

Commissioner MCFADDEN: Only as reflecting upon the profitable use that could be made of the land.

Mr. MILLER: Well, as to the value of the pulpwood as of that time, all right.

Q. What would you say the value of the pulpwood was as of June, 1947? A. Pulpwood at that time was about two and a half or three dollars per unit on the stump.

Q. On the stump? A. Yes, stumpage.

Q. As of July, 1950, what would you say the price of it was? A. It has advanced some little bit, maybe fifty cents. It has been practically the same thing.

[Tr. 411] Q. What do you say the value of the saw timber was as of June, 1947? A. That grade of timber, about $20.00 a thousand.

Q. What would be its value as of July, 1950? A. That grade of timber, about the same thing, very little change in it.

Mr. ROBINSON: The witness is with you.

CROSS EXAMINATION

By Mr. MILLER:

Q. Mr. Henderson [sic], as I understand, you evaluated all of this land at a total of $441,000.00? A. $441,948.00.

Q. Now, you said there 700 acres there which you recognized as uncleared bottom lands? A. Yes, sir.

Q. What did you estimate the cost of clearing that bottom land, in your judgment, to be for farming or for grazing purposes? A. Well, it depends on who is going to do the clearing. If the government does it will cost a $100.00 an acre or better.

Q. I am talking about farmers doing it? A. What?

Q. I am talking about farmers doing it and getting it seeded and graded [grazed]? A. To clear it, it will cost a farmer around $50.00 [Tr. 412] an acre, and practically the same thing, about $50.00 an acre, to get it grazed and seeded, or seeded to graze, in other words, about a 100 dollars an acre to clear the land and seed it.

Q. Now, what price per acre did you put on that portion of 700 acres of bottom lands that were taken in June, 1947, as of June, 1947? A. What price did I put on it?

Q. Yes, per acre? A. $100.00.

Q. And what price did you put on it in that portion that was taken in January, 1950? A. I didn't make any difference in the price at all.

Q. And that was $100.00 an acre? A. Yes, sir.

Q. And that part that was taken—that was the last—well, there were three dates of taking. I think that is immaterial anyway. But whatever date they took it, the price was all the same? A. $100.00 per acre.

Q. As of the several days of several dates of taking? A. Yes, sir.

Q. Now, how many acres did you figure were in this Twin City Power Company property altogether? A. I had 1605.81 on the South Carolina side.

Q. 1605.81 acres on the South Carolina side? A. Yes, sir. [Tr. 413] Q. And on the Georgia side? A. 2813.66 acres.

Q. Well, we will call it 2800 acres. We will just speak in round figures. Then that would be a round figure of 4400 acres all together? A. 4419.48 acres.

Q. Well, call it 4400 acres. Now, that left, approximately in this whole thing, after deducting the 700 acres for bottom lands, that would leave, approximately, 3700 acres of uplands? A. That's right.

Q. What did you consider as to the amount of timber on that land? A. That was on it?

Q. Yes, that might have been on it? A. I didn't figure that.

Q. What was the value as to that per acre in June, 1947? A. The dates were all the same.

Q. The dates were not the same. Do you know the respective dates of taking? A. I worked on the basis that the land was taken between 1946 and 1950, inclusive, and there were no appreciable changes in values during that time.

Q. You mean in Lincoln County, Georgia, and McCormick County, South Carolina, you consider there was no change in values between 1946 and 1950? A. No appreciable change. Farm property did go off some in 1947, but in 1948 it began to climb back a little. [Tr. 414] However, to all practical purposes it remained constant in this area.

Q. What value per acre did you put on this 3700 acres? A. $370,000.00.

Q. Oh, I know that, but I mean per acre? A. What?

Q. Was it a $100.00 per acre? A. $100.00 per acre, yes.

Q. You considered this upland uncleared? You knew that it was uncleared? A. I knew some of it was.

Q. Well, do you know what portion of this upland was uncleared? A. No, I didn't.

Q. Well, let me see. The bottom land you say, at any time between 1946 and 1950, would be worth $100.00 per acre? A. Yes, sir.

Q. And the upland, between 1946 and 1950, would be worth a $100.00 an acre? A. Yes, sir.

Q. And if you cleared a portion of the upland it would be worth a $100.00 an acre? The cleared up land would be worth $100.00 per acre, too? A. I didn't understand your question.

Q. All right, sir. Suppose a portion of this upland had been cleared, would that also be worth a $100.00 an acre? [Tr. 415] A. Not every acre of it, no. As I stated a few minutes ago, there is a certain portion of that kind of land that you must throw out.

Q. Can you give us specifically—— A. --just wait until I complete the answer.

Q. All right. A. You value that land at so much per acre. For instance, based on all extenuating circumstances, its possibilities for growing timber, the returns from the timber, adjacent to and being a part of a power site, which

would give it some additional value, and all of those things have an influence on the market value. You try to arrive at a per acre market value and then you must throw out so much, whatever percent you find that you think is waste land; that is not in there. In this case I figured about 20 or 25 per cent that would not.

Q. Have you named all the things you considered? A. I beg your pardon?

Q. Have you named all the things you considered? A. No, sir.

Q. Are there any others that you want to name? Did you consider comparable sales? A. I did not.

Q. Of similar property? A. I did not.

Q. You did not? A. Not in that area, no, sir.

[Tr. 416] Q. Did you know about comparable sales in Lincoln County, Georgia? A. No, sir.

Q. And in McCormick County, South Carolina, between 1946 and 1950? A. I did not.

Q. You did consider power site value. Did you consider yourself qualified as a power site value expert? A. I didn't mean just power site value, but the fact the dam site, not the dam site, but the lake site, the bond sites, have gradually grown in demand, the demand for lands along these streams, which are subject to developing electric power, has cast a marked influence or a marked difference upon the value of lands along those streams.

Q. Well, now did you consider any sales of lands for those purposes, pond purposes, or sales of land for power site value, specific sales that you can give us citation on within the past five years in Lincoln County, Georgia? I don't want to get any more to check. A. No, as I told you awhile ago, I did not consider any comparable sales in that time.

Q. For any purpose? A. I did consider, in arriving at these values, the fact that almost continuously, on one side of the river, and continuously on the other side of the river, that this one owner had title to all the property bordering along the river.

Q. That would be a consideration to a person otherwise qualified. Just what do you mean by the consideration that you [Tr. 417] gave for the returns from the timber? You said you considered the returns from the timber? A. The growing and marketing of timber.

Q. Well, now did you consider that there is a good deal of timber land bought here, bought and sold by the International Paper Company and others, did you consider what they actually paid for such lands for that purpose? A. No sir. I didn't know of any particular instance where they bought or sold any.

Q. Did you use any method in arriving at the value of this property from the growing timber, or did you just consider that generally? A. What?

Q. Did you consider that return from the timber generally, or did you go into the question—or make calculations with respect to what could be made from this particular land by growing timber on it? A. I estimated what it would grow, and the returns that were probable from it.

Q. Then did you capitalize those possible returns? A. Well, to practical purposes you will capitalize in trying to arrive at a value.

Q. Now, whether or not there was any pulpwood on this land at all at the time of taking, you don't know? A. No, sir; I did not.

Q. Did you figure whether or not pulpwood could be planted on it and produced in a period of years—in a period of five years, say, in the future and then capitalize it [Tr. 418] in arriving at your estimate of value? A. I did not in this particular case, any specific case, but I did take into consideration that about 75 percent of this land was capable of growing timber, if set to timber, that was capable of growing about 800 feet of lumber per year, and about two units of pulpwood on the high land bordering on the land that was cleared. The land was not cleared. It would have been impossible for me to arrive at an idea as to what had been on the land, but all of it goes to indicate that the land had been timbered some with very small pines, and some in saw pine.

Mr. MILLER: That's all.

Commissioner BARRETT: In your testimony you said that you find, in making land appraisals, you have to take into consideration the effect and influence of power sites like Santee Cooper and Buzzard Roost. Did you take into consideration only as to those lands that lay along the river borders?

The WITNESS: Yes, sir.

Commissioner BARRETT: Could you tell us in this case about what percentage of that $100.00 per acre did you allow for that possible power site value, I mean other power sites that might affect the value of this land?

The WITNESS: In as much as these different tracts ran down and bordered on the river, I considered this as all being one. I did not consider that it would be fair to cut off some of the lower land, which would probably be flooded and leave partial corners and such as that.

[Tr. 419] Commissioner BARRETT: No. My question is this: Suppose you had 4,700 acres of high land entirely away from the river, the same kind of land not bordering on the river? Have I made myself clear?

The WITNESS: Yes, I think you have. Well, that high land that was going to be left would be governed, the price, in my estimation, the reasonable market value, would be governed entirely by the conditions of agriculture and demand for that land. This on the river that would be subject to flood, I assumed about a 20 or 25 percent increase for that portion of it. I would say, too, in my experience in attempting to acquire land for the government, I know that it is quite expensive to have land identified, surveyed, appraised, blue printed and acquired, I gave that approximately the same increase in value.

Commissioner BARRETT: The acquisition cost, you took that into consideration?

The WITNESS: Yes, sir.

Commissioner BARRETT: Actually, the land would be worth about $50.00 an acre?

The WITNESS: If it wasn't for these other things, it would, yes sir.

Commissioner BARRETT: I have no further questions.

Mr. MILLER: I move to strike the witness' valuation, evidence of any valuation on the grounds that his direct and cross examination reveals that he has no—due to the fact that he has not been over the land, and the various things he reveals show that he has no competent basis for the valuation [Tr. 420] of this land, and he used many incompetent basis and matters upon which he has not qualified.

Commissioner McFADDEN: Motion overruled.

Commissioner JOHNSON: I want to ask one question. Mr. Miller asked you if you have known of any other lands sold in McCormick County, South Carolina, during a like period of time, have you known of any other tracts of land in comparable size on the river bottom, bought and sold in this general area in the State of South Carolina?

The WITNESS: I never knew of another comparable tract or anywhere in my own experience.

Commissioner McFADDEN: Let me ask Mr. Todd just one question, please. Mr. Todd, if we should take, and this is just an assumption, and so just don't take it as an actual situation, as it is just an assumption on my part; but suppose you take what you call the bottom lands that lie along the river bed and move them away from a stream that had a power project potential, and put them on a creek where you couldn't possibly put a power dam, what would those bottom lands be worth on a creek?

The WITNESS: For agricultural purposes?

Commissioner McFADDEN: Yes, sir.

The WITNESS: Now, if it is cleared and seeded, it would be from a 150 to $200.00 an acre.

Commissioner McFADDEN: And if it is not cleared and seeded, what would it be worth?

The WITNESS: From 50 to $75.00 an acre.

[Tr. 421] Commissioner McFADDEN: All right, then; Now, take those uplands, where you can grow your saw timber and you can also grow your pulpwood, and let's take a tract, say, of a hundred acres, and move them away from a big mass of land, a big quantity of land, such as this, and move

them up on a hill above, oh, a three foot creek, or something like that, what would that land be worth?

The WITNESS: From 40 to $60.00 an acre.

Commissioner MCFADDEN: That's all.

Mr. MILLER: I now renew my motion to strike for the same reasons and all reasons heretofore stated and on all grounds.

Commissioner MCFADDEN: Well, we still overrule your motion.

Mr. ROBINSON: Now, Mr. Commissioners, that completes our case. When we come back, after a recess, we may have one or two things to put in, but I believe that is substantially all we have. There is a bare possibility that we may want to take some depositions of some witnesses, or one witness rather, but he has not recovered sufficiently to take them, and I doubt that he will during the period of this case, and my present thought is that we will not be able to use him, but there is some possibility, and if so, we will take as prompt action as we can.

Commissioner MCFADDEN: Now, as I understand, Gentlemen, that concludes this session of hearings this week, and we will recess to reconvene at ten o'clock on Tuesday morning, April 22, 1952, in the Federal Court Room in the Federal Court House in Augusta, Georgia.

* * * * *

[Tr. 703] Mr. CLARK D. HANNOLD, sworn for the government, testified.

DIRECT EXAMINATION.

By Mr. MILLER:

Q. Mr. Hannold, do you have a college degree, if so, tell us when and where and what it is. A. I received a Bachelor of Science Degree in Forestry from the Louisiana State University in 1938.

A. Upon receiving that degree, what did you do? A. I received a degree in June, 1938, and the remainder of that

summer I cruised timber for the Gaylord Container Company of Bogalusa, Louisiana.

Q. And what kind of timber was that? A. Pine and hardwood.

Q. And then what did you do? A. I took a job with the State of Oklahoma as District Forester in northeastern Oklahoma and had charge of approximately three counties in fire protection. I stayed with the State until January, 1940.

Q. Did that involve timber cruising? A. Not very much.

Q. Then what did you do? A. I came with the Soil Conservation Service, Department of Agriculture, in January, 1940, and was stationed at Marshall, Texas, and was Project Forester on the Project at Marshall, Texas. There I cruised timber for farmers and helped plan for farmers and advise farmers on woodlands and cutting operations.

Q. Did that involve also advising them as to planting? [Tr. 704] A. Some planting, yes sir.

Q. How long were you in that capacity? A. I was there until probably in July.

Q. Of what year? A. 1940.

Q. And then what did you do? A. I got a job with the Land Utilization Department of the Soil Conservation Service. It was a temporary filling in between the Soil Conservation Service at Marshall, and my transfer to Hinesville, Georgia, where I was transferred as a timber cruiser.

Q. How long were you in the timber cruising business in Georgia at that time? A. Until 1942. Then I was moved about over the Southeastern United States, in the South Atlantic Division. Most of my work was in Georgia, Florida, Alabama and South Carolina.

Q. Was that timber cruising about over those various states? A. Yes, sir.

Q. And what kind of timber was involved? A. Pine and hardwood.

Q. How long did that last? A. Until August, 1943, when I enlisted in the Army.

Q. How long were you in the Army? A. I was in the Army until January, 1946.

Q. Were you assigned to any service while in the Army that involved dealing with timber cruising? [Tr. 705] A. Yes, sir. I was with a Forestry Battalion. We had a small sawmill that we shipped overseas in New Guinea and the Philippines and got timber for the Armed Services for hospitals and the like.

Q. Does that involve cruising timber, cruising tracts, before you try to estimate the amount you will get? A. Yes, sir. A cruise was made to keep account of what timber was supposed to be on the ground and later was checked out as to how much timber we had cut. I imagine that was selling to these foreign countries that we cut the timber from.

Q. The foreign countries had to pay you for that timber you cut? A. Somebody did, I assume.

Q. Was that Forestry Division assigned to any other place during the War? Was all the timber work in the Philippines during the War? A. Well, in places like New Guinea and Dutch Guinea and Luzon and in the Philippines.

Q. What kind of timber was that? A. It was practically all hardwood and mahogany and various species that we do not have over here.

Q. Then how long did that last? A. Well, I returned to the United States in January, 1946, and I took a job with the St. Louis Paper Company and was stationed at Tallahassee, Florida. I was cruising timber ahead of the dealers and operators for the paper company. I stayed with them until May, 1946, and then came back to the Corps [Tr. 706] of Engineers. I came up to Lincolnton, Georgia, and in the fall of 1946 I was transferred to Lincolnton on the Clark Hill Project approximately in March, 1947. I remained there until 1950.

Q. And how much timber did you cruise in the Clark Hill area, roughly, on both sides of the river? A. I would say between a 100 and 140,000 acres.

Q. In making those timber cruises, was your work pretty generally confined to the Clark Hill Area during those three years from 1947 to 1950? A. Yes, sir.

Q. In making those timber cruises at Clark Hill, did you

have occasions to go back and make checks upon your timber cruises? A. Yes, sir. In several instances we would cruise the timber on the tract and before the tract was either purchased or condemned the owner would cut the timber, and I made it a rule to check up and see how much timber was cut and how close my estimate was to the amount of timber that he cut.

Q. Now, I want to take these up in accordance with the Civil Actions. Will you state what tracts E-434 and E-439

Commissioner McFADDEN: Give me those numbers again.

Mr. MILLER: That's E-434 and E-439.

Q. Did you make a cruise as of June 19, 1947? A. Yes, sir.

Q. Are these those cruises? A. Yes, sir, copies of them.

Q. I wish you would merely state those into the record. [Tr. 707] A. Well, Tract E-434 and E-439. Tract E-434 contains 1064.47 acres. I cruised that and estimated the timber on this tract.

Mr. MILLER: Before you give that, Mr. Hannold, I want to state this for the record: This is offered for a particular purpose. It is offered to get the amount of timber on these lands into evidence for use by qualified witnesses to use in evaluating this as a whole. By offering this evidence we do not offer it generally because we contend to make separate evaluations of timber and land and add it together is incompetent and we will demonstrate why that can't be done. This is to get an accurate timber cruise in evidence and will be used by witnesses whom we contend are competent to evaluate the land as a whole.

Q. Now, on E-439, give us the feet of pine? A. That was E-434. I found about 22,000 feet of pine sawtimber. I found 42,000 feet of miscellaneous hardwood.

Q. And the pine was between 10 and 12 inches? A. Yes, sir.

Q. And you placed a value of $13.00 per thousand on it? A. Yes, sir.

Mr. ROBINSON: Let him testify.

Mr. MILLER: All right.

The WITNESS: The pine was between 10 and 12 inches in diameter, the residual after the tract had been cut over. I placed a value, what I thought it would bring on the market, [Tr. 708] $13.00 per thousand, a total value on the pine of $286.00. The hardwood ranged from 10 to 18 inches in diameter. There were 42,000 feet. I placed a value of $10.00 per thousand on the hardwood, or a total value for hardwood of $420.00. I found 804 units of pine pulpwood. Now, that was all the pine timber that I hadn't included in the saw timber down as small as the pulp mills would take it. I placed a value of $2.00 per unit, a total $1,608.00. The total timber value on this tract of $2,314.00.

Q. Mr. Hannold, will you give us the figures also now on tract E-439, and then I want to ask you some questions about it. A. The pine saw timber——

Commissioner MCFADDEN: How many acres in that tract?

The WITNESS: 328 acres. I found 3,000 feet of pine saw timber, ranging from 10 to 14 inches in diameter, which I placed a value of $8.00 per thousand, a total value of $24.00. I would like to explain why these prices are different after I get through. Miscellaneous hardwood, I found 26,000 board feet, ranging from 10 to 20 inches. I placed a value of $6.00 per thousand, and a total of $156.00. I found 850 units of hardwood pulpwood and I placed a value of $1.00 per unit, a total of $850.00. I found a total of 40 units of pine pulpwood and I placed a value of $1.00—I beg your pardon, I placed a value of $1.25 per unit, a total of $50.00. A total timber value of $1,080.00 on Tract E-439. Now, I would like to explain——

Q. Before you explain I would like to put those in [Tr. 709] evidence right now. He read them, and I would like to get them into evidence in a group according to these civil numbers.

Commissioner MCFADDEN: All right, if you will, put the timber testimony relative to tract E-434 and E-439, and they are introduced in evidence and marked as Exhibits "G-D-1 and G-D-2," respectively, is that what you wanted?

Mr. MILLER: Yes, sir, both of them.

Commissioner MCFADDEN: Well, you wanted both of them to go together, didn't you?

Mr. MILLER: Yes, sir.

Q. Now, Mr. Hannold, will you take these exhibits, since D-1 is first, Tract E-439, and explain the value there, the timber you got there and the figures and everything. A. Tract E-439 is the tract which we know as Price's Island, and the timber had been cut off this tract not too long before we taken the tract, and the timber that I have shown here was the residual, pine and hardwood, that was left after this timber operation. The lower value reflected the inaccessibility of getting in there and getting the timber out. That was what I wanted to point out why I put a lower value on this timber.

Q. Was that timber on that tract well grouped or was it spread out over the 328 acres? A. If I remember there were two small patches of young pine that was left, accounting for both the pine saw timber and the pine pulpwood. There was, I believe, approximately 80 acres of open land on this tract.

Q. Excluding the 80 acres of open land, that is no timber at all for that size tract, is it? A. No, sir, very little timber. The hardwood was [Tr. 710] scattered over the remainder with the exception of those two small patches of pine.

Q. Now, make the same explanation with respect to Tract E-434, which is Exhibit D-2. A. Tract E-434 is the tract which is on the Georgia side of the river and next to tract E-439, which is Price's Island. This tract had also been cut over for timber. The saw timber had been cut off, and some of the pulpwood timber had been removed. There was a very poor stand of timber left. It was about as clear cut as a sawmill and pulpwood operater can get it, and of course the value of the timber reflect that, about $2.00 per acre.

Q. What was the acreage on that tract, Mr. Hannold? A. 1064.47 acres.

Q. You are finding the value there, that amount of timber, you are finding that the value of the quantity doesn't

mean by any means that that is in saleable quantities to a sawmill operator? A. The pulpwood might be sold. The saw timber would not.

Q. When you take the pulpwood into consideration you took the merchantable timber down to eight inches, I believe, on the pine? A. The saw timber——

Q. —And the pulpwood down to 5 inches? A. Yes, sir

Q. Now, to cut all of that off, would it affect, or what would the effect be on the land? [Tr. 711] A. Well, it would be cleared like it is now in the water area of the dam.

Q. Well, as to the future growth and the future value, does it cut it down? A. Well, it will have practically no value for the next 50 years as far as timber is concerned, unless it is planted or set out in pines.

Mr. Miller: May it please the Court, I have one special witness here. I wonder if we could have a recess for about five minutes, so that I can put on my special witness—and by the way my throat is getting dry anyway. It is about eleven o'clock—I have finished with this witness for the two tracts he has testified to, and——

Commissioner McFadden: It is entirely satisfactory to us if it is with all parties. If it is agreeable you can put up your next witness and then recall Mr. Hannold.

Mr. Robinson: That is agreeable to us.

Commissioner McFadden: Then we will knock off for about ten minutes.

Note: At this point a recess was had from 10:50, a.m. until 11:10, a.m. of the same day at which time the proceedings were resumed as follows on the next page.

[Tr. 712] Mr. H. Gould Barrett, sworn for the Government, testified.

Direct examination.

By Mr. Miller:

Q. Mr. Barrett, where were you born and raised, if you don't mind saying? A. Augusta, Richmond County.

Q. What is your business? A. I am a real estate broker.

Q. And you do business in this town as the H. Gould Barrett & Company? A. Well, I operate with that firm, yes. I was the former owner, but I am an associate broker there with two other members.

Q. How long have you been in business in Augusta, in the real estate business? A. I would say 25 years.

Q. At the present time, and during the past five years, did you specialize to any extent in country acreage of various types? A. Well, for some years we have specialized in acreages and farms and cattle ranges and such as that.

Q. Does that also involve timber lands, pine lands and cut over lands? A. Yes, sir.

Q. By the way, I want to get it in the record. You are no relation whatever to Mr. George Barrett who is a member of the Commission? A. No, I wish I was.

Q. I just wanted the record to show that, because I [Tr. 713] think it should? A. Well, I wish I was.

Q. Mr. Barrett, can you give us an idea of the extent and type of acreage you have listed now with your firm? A. Mr. Miller, we operate all in the Augusta area, and we have land for sale, cut over lands, and growing pine lands, and we have some in Aiken County, Richmond County and Columbia County.

Q. That is a radius around Augusta of about how far? A. Well, we go 35 or 40 miles.

Q. Now, have you been listing that kind of property—or how long have you been listing that kind of property and specializing in and dealing in that kind of property? Just explain. A. Well, we deal in any type of real estate that is possible. Now, farm land pays us 10 percent commission, and there is a whole lot more work involved, but the financing of city property has been difficult, and we branch into things that we can make a commission on, so I would say, in answer to your question, right along for years.

Q. You have sold acreages of various types, timber lands, cut over timber lands, growing timber lands, pine lands and

on up to improved farm lands during that period? A. Yes, sir.

Q. Would you say that in this area, during the past five years, there have been enough of that type of land on the market, bought and sold, to establish a fair range of market value for that type of property? [Tr. 714] A. Mr. Miller, what type of property are you speaking of?

Q. Well, we will take cut over timber lands, and lands with some timber on it? A. Yes, we have sold enough or we are acquainted with enough to sell to know just about what land is worth.

Q. All right, let's get down through the various types. Now, what about growing pine lands? A. Well, we have found it very difficult to list the sale of timber. There is a good market for timber and as a rule that is sold by the owner to a sawmill man, and therefore very little timber goes through a real estate broker's hand.

Q. The timber that goes through your hand is growing timber? A. Yes, sir, and cut over timber.

Q. And for that reason, you say there is a range of market in this area? A. What is it?

Q. No, I don't want to come to those yet, but there is a range of the market. A. Yes, sir.

Q. Then what about the farm lands and stock lands or stock farms or grazing lands, lands for that purpose? A. Well, we have sold, or have for sale, stock farms for sale, and the range on that, well, it is according to the improvements on the land, but just the naked land would have a value plus the cost of the value of the improvements. [Tr. 715] Q. There is a variance of ranges in accordance with the improvements? A. The fences and the quality of the home that is on it and etc.

Q. Now, in addition to your brokerage work there, have you personally through the years bought for yourself and owned and sold property? A. Yes, sir.

Q. All these types of property? A. Not cattle ranges, but mostly pine groves and cut over lands.

Q. Now, Mr. Barrett, in your business of listing of various property and buying and selling various properties,

have you made an effort to keep up with the going prices of land, the going market by keeping a record and looking into other records and looking into the market as to other sales? A. Well, like any real estate broker or any lawyer if he hears of a case he acquaints himself with it. We don't catch all of them, but in our rounds we hear things where people have bought certain property.

Q. One of the purposes of your business is for people who want to list property for sale, do you have any idea as to the range of the market to know whether it is listed right or not? A. Yes, sir.

Q. I have the impression that while you get ten per cent for listing acreages, it is also expensive to advertise it and show it? A. Yes, sir.

[Tr. 716] Q. Mr. Gould, on timber lands, pine lands, is there a market on that from pulpwood and the like sufficient to establish a market on it? A. Mr. Miller, over the past years piny wood lands have had very little value until the pulp people began to come into the south, and they sorta establish a pulpwood price for land. In many cases they did not buy the land. I know a case where they took a lease on the land and paid the owner so much a year for 20 or 30 years with the understanding when they left there the land would be in just the same state as they found it.

Q. Now, Mr. Barrett—— A. —did you ask me the range of prices or——

Q. —I asked you if there was a range and you said yes. Now, Mr. Barrett, if a man came into your office and wanted to list for sale two large tracts of substantial tracts of land unimproved, cut over, or without any sawmill timber on it, unimproved and unfenced, and off the paved road for timber purposes or grazing purposes or farm purposes, we will say, at a price of $85.00 per acre, what would you say as to that falling into a reasonable range of the market? A. Now, what type of land?

Q. I said cut-over, unimproved and uncleared timber lands for timber growing purposes? A. $85.00 acre?

Q. Yes? A. We wouldn't tell him where to go but we would be busy on something else.

[Tr. 717] Q. You would consider that clear outside of any reasonable range? A. I would like to amplify my remark on one thing. Over here in the H. Bomb Area in South Carolina there was a broker here that had a tract of 360 acres—this was in September, and the bomb plant broke in November—and it was a pretty piny wood piece of land, no saw timber, but I asked him if I could associate with him to sell that piece of land and he said, yes. So I sold that 360 acres for $6.30 an acre and not a penny down right off the paved highway. I saw it so much until I got sold on it myself, and I bought it for $6.30 an acre.

Q. Of course, I want your opinion, based on your real estate experience, but I don't think it is proper to mention any specific place. A. All right.

Q. Now, come down to lands you mentioned for pulpwood raising, pine raising with an insubstantial quantity of pine on it saw or just cut off, what would be the reasonable range for that type? A. Well, Mr. Miller, I am familiar with a sale that took place last year.

Q. Well, what I am after, in the light of all your experience? A. I would say from 12 to $20.00 an acre.

Q. Now, I want to come to a good improved stock farm and stock grazing land, and I am talking about lands with pastures, nice balanced seed pastures, some farm land and [Tr. 718] maybe timber lands, a nicely balance stock farm for grazing that have sprung up in the last few years and have been developed with the proper fencing on them and with proper and sufficient barns and wells and whatever improvements it takes to make them, homes sufficient for that purpose; does that stuff fall within a reasonable range of the market? A. Well, Mr. Miller, if I understand your question, the only thing I can tell you is what I know about in my office. If I can be specific, I can tell you. I will say this, that every farm that is in a high state of cultivation, as I said the land and fencing is worth the price and improvements would add to it. It is like taking any house here in the city, the real estate and home in the country of the same quality is worth just about what that improvement is, the brick and mortar would be in the city, but to answer

your question, a high grade stock farm that we have listed now runs 50 or $60.00 an acre. It is in perfect state and with fine homes on it.

Q. And that $50.00 per acre includes the improvements. A. I am thinking of one now that runs approximately $60.00 an acre, it is about 800 acres, and there is one home that's worth $14,000.00 and the other house worth $8,000.00, so when you deduct the improvements on there that gives you some idea of what the land is worth.

Q. But in listing and selling these you put a good price per acre on them? A. Well, we generally ask the owner of the land what [Tr. 719] he wants for it and if it falls within the range of what we believe, all right. We have some men in the office to go out and ask opinions and shy away so I wouldn't express an opinion, but after so many years in this real estate brokerage business you generally get a feeling of what the property could bring, and it is just a subconscious or unconscious belief of what you think the market will stand.

Q. Well, that is the very purpose I have brought you here is to try to insert into the record, if possible, your feel of the market? A. Yes, and if it is over-priced we just couldn't afford to handle it. It takes time to do that. All real estate brokers try to keep a strong market, because we meet these people from the north, Ohio, who have bought places from us, and they tell us, they say "you boys down here are crazy for selling your land so cheap when we get $300.00 an acre for our stuff up in Ohio." I say, "well, you have got more people up there than we have down here and more people that want it," but there is so much land in the south here you can't create a strong market. You don't have the people.

Q. Has it been your experience in the real estate business that the old law of supply and demand has its effect on real estate about the same as any other commodity? A. Yes, sir, I am sure of that.

Q. And what would you say about the supply and demand for the type of land here we are talking about? A. Well, we could turn 90 percent of it back to the Indians

and still not starve. We need people more than anything else.

[Tr. 720] CROSS EXAMINATION.

By Mr. ROBINSON:

Q. Mr. Barrett, have you inspected the Twin City properties which have been condemned in this case? A. No, sir, I haven't.

Q. Have you sold any property in McCormick County in the last five years? A. No, sir; we have not.

Q. I believe you told us that with the coming of the pulp man, the pulp mills, there has been an increase in demand for pine lands and pulpwood? A. That's correct.

Q. And there are pulp mills in Brunswick, Georgia, and at Jacksonville, Florida and at Savannah, Georgia and Charleston, South Carolina? A. Yes, sir.

Q. And those mills create quite a demand for pulpwood? A. Yes, sir.

Q. And that demand has been increasing over the past ten years? A. I believe so, yes, sir.

Q. And we also, in South Carolina and Georgia, are getting over this thing of too few people, aren't we, on account of a boom down here with reference to new people coming in? A. Yes, sir, we are, definitely.

Q. As a matter of fact, aren't both of the states, in the postwar period becoming very much industrialized? [Tr. 721] A. Yes, and I am tickled to death with it.

Q. And that brings in a lot of people, don't it? A. Yes, sir.

Q. And that adds, of course, to the value of real estate in the area? A. That's correct.

Q. And I believe you told us that some of your northern friends spoke of comparable character up there was worth $200.00 an acre? A. Well, I wouldn't say of comparable character for a whole general area, but what they bought from us, they said "you people are foolish to sell your land so cheap." We don't have anything to do with the prices.

Q. Now, do you know timber values in this area? A. No, sir, I am not acquainted with cruising of timber.

Q. You are not acquainted with the value of timber? A. No, sir.

Q. But the value of pine timber has gone up sharply since the second world war? A. Yes, sir.

Q. And the value of pulpwood has gone up? A. I believe pulpwood has gone up. I have in mind, or have a recent sale that I can tell you about in relation to the International Paper Company ——

Q. —— well, I was interested primarily whether or not you knew the price of pulpwood had gone up? A. Yes, sir. [Tr. 722] Q. Would you be in position to give us the value of lands which would produce 15,000 feet of saw timber per acre every 15 or 20 years and five and six units of pulpwood every five or six years? A. No, sir; I would not, because I am not acquainted with the pulpwood prices.

Mr. Robinson: I think that's all.

Redirect examination.

By Mr. Miller:

Q. It was in the light of all of this information that you have given Mr. Robinson that you fixed a range on timber lands, cut over timber lands, from 12 to $20.00 and a grade A stock farm at from 50 to $60.00? A. Yes, sir.

Q. I wish you would also give us roughly what you mean by a Grade A farm? A. Well, every farm that is offered for sale, if a man cannot make a living on it, on the investment that he is putting in it, it is just not saleable. We have loads of land that will never be sold, other than maybe to the pulp people who will buy it and re-seed it every year. Of course, the closeness of a stock farm to a large growing community, that covers the picture, and a man may buy that with a view of using it a few years and have the potential growth of a city to come to him, but a man has got to make a living on a stock farm that he buys, and we have found in [Tr. 723] this area that 50 to $60.00 an acre is about tops of what a stock farm will bring in an excellent

state of cultivation and condition, and that is with a main dwelling, barns, pastures, cross fences and such as that.

Q. Now, what other matters enter into the sale of farm lands? In other words, what importance does paved roads, all weather roads, access roads to paved highways and utilities, at least electricity and telephone, have? A. Well, electricity is very necessary. Georgia, I am proud to say, has about 97 percent of its farms electrified. It is unbelievable but it is true. I read that the other day.

Q. People buying farms today demand all of those things? A. Oh, yes. You might as well be out in the Atlantic Ocean if you haven't got power lines, but paved roads do help, it certainly definitely helps.

Mr. Robinson: Mr. Miller, did you withdraw that question about the 360 acres of land, otherwise I would like to ask him about it and what he sold it for?

Mr. Miller: I want to say this; that I don't think that specific sales, the listed prices, is competent, but I don't object if Mr. Robinson or the Commission wants information from this witness on that line. I don't object to it coming out, but I don't want to open the door to that because——

Mr. Robinson: Well, then just strike what he paid for it.

Mr. Miller: Yes, that can be struck from the record.

[Tr. 724] Commissioner McFadden: Then suppose we strike all reference to that 360 acres over in Aiken County.

The Witness: I would like to say this: in appearing before the Commission I am merely bringing my experience of 25 years that I have been in the business. I don't want to hurt anybody and I don't want to do anybody an injustice in any way.

Commissioner McFadden: We understand that. From your viewpoint, comparisons would be the best way to get at it, but we have got to stick to certain rules of evidence.

Mr. Miller: Did I indicate to you that I would issue you a summons?

The Witness: I didn't know whether you were going to subpoena me or not. I told you that I would be available.

Commissioner McFADDEN: Let me ask you just one or two questions, Mr. Barrett; I believe you said that cut over pine timber lands, in your opinion, generally, would be worth from 12 to $20.00 an acre?

The WITNESS: Yes, sir, in view of the fact that the pulpwood people are buying up a lot of cheap land.

Commissioner McFADDEN: Now, would a large acreage, say, 4,500 acres, collected together under one owner, would that collection have any effect whatsoever on the values?

The WITNESS: Mr. McFadden, if you will let me answer that question in this way, with this statement, I don't think it would be hurtful to anybody.

Commissioner McFADDEN: All right, sir.

The WITNESS: There was a local doctor here, Dr. Butler, [Tr. 725] that died two or three years ago, and last year we had his farm consisting of about 2100 acres for sale. A local bank had it. It was hurriedly sold because they said they had a long time to sell it. Well, we plugged that, oh, for the longest kind of a time down here around Keysville, and the International Power and Paper Company came in here and bought 1750 acres for $17.68 an acre, and they agreed to pay all taxes for that year, and that could not have been over ten or fifteen cents an acre. So there was a big tract of 1,750 acres that went for $17.00 an acre, and it had been re-seeded in your pines and had the most beautiful pine woods on it you ever saw, and we couldn't understand why local people didn't buy it, and the pulpwood people eased in here one night and bought it.

Commissioner McFADDEN: Well, let me ask you this: To be very specific, this Twin City site, they had in round figures about 4,000 acres of land up and down each side of the Savannah River above Price's Island, would that land be any more valuable when collected into one big tract of 4,000 acres than it would be if it was in small tracts?

The WITNESS: I am sure it would have some increase, because when you assemble anything—well, it is better to have a big tract. However, they have got these forest rangers and they will buy any size tract, but of course a large tract is very desirable.

Commissioner McFADDEN: Was the value of that land

increased per acre by reason of the fact that it had been collected into one group?

[Tr. 726] The WITNESS: I would say that it had been increased, maybe a dollar an acre. Now, that is just a figure I am pulling out of the air.

Commissioner MCFADDEN: What do you think would be the cost of collecting some 60 tracts into one unified tract of land?

The WITNESS: Well, according——

Commissioner MCFADDEN: I mean on the open market.

The WITNESS: Well, you would have a commission on each tract to pay a broker for getting it of ten percent, but it would be hard for me to tell just what the increase in cost would be to do it. However, to answer your question, it certainly is satisfactory to get a lump of it at one time rather than to get sixty tracts, and if it added two or three dollars an acre to it, it might be worth that, or say even five dollars an acre that would be the top.

Commissioner MCFADDEN: You think that would be the top?

The WITNESS: Yes, sir.

Commissioner MCFADDEN: And that would be about what percent you would add in value to it due to the fact that it had been collected into one unified holding?

The WITNESS: Mr. McFadden, if you sent me out to buy up a block of land, or a block in Augusta, and you wanted to get everything in that block, I would tell you right off to just prepare to pay from 10 to 15 percent more than you could buy each individual house, or one house. Assembling of anything costs more than to buy an individual thing.

Commissioner MCFADDEN: You figure that 10 to 15% [Tr. 727] increase in valuation——

The WITNESS: That is for farm land. You may have to go a little higher than that with city property.

RECROSS EXAMINATION.

By Mr. MILLER:

Q. The farm you referred to at Keysville was being sold by mistake? A. Well, it was offered by mistake, but it

was not what you call dumped on the market for sale to anybody. We had a year to work on it.

Q. But the owner had title? A. Yes, sir.

Q. And it was disposed of under the terms of his will? A. Yes, sir, but those pulp people, they are cold blooded. They don't have anything but ice water in their veins. They will take your shirt off your back.

REDIRECT EXAMINATION.

By Mr. MILLER:

Q. You had it on the market for a considerable time before you turned it loose to the public? A. Well, it had a lake on there of about a 100 acres, or some large number of acres, and we thought we could sell the whole business with that lake, but we still ended up with the lake and sold the other for pulpwood.

(Witness Excused)

[Tr. 728] Mr. CLARK D. HANNOLD, recalled by the Government, testified.

REDIRECT EXAMINATION.

By Mr. MILLER:

Q. Now, Mr Hannold, with respect to Civil Action No. 521, I hand you what purports to be a timber cruise on tract E-443, E-446, E-457, E-498 and G-600. Did you make timber cruises on all of those tracts as of January 3, 1950? A. Yes, sir.

Q. As of January 3, 1950? A. Yes, sir.

Mr. MILLER: I wonder how it would be to just hand these to opposing counsel and see if we can't just assume that they have been read into evidence?

Commissioner McFADDEN: All right do that.

Mr. MILLER: Let me first identify them by the witness.

Q. Will you please examine these five sheets of paper, Mr. Hannold, that I read to you and see if they are your timber cruise on that land? A. Yes, they are.

Mr. MILLER: I would like to introduce these in evidence as exhibits to Mr. Hannold's evidence as what——

Commissioner McFADDEN: Let them be identified as Government's Exhibits 1 through 5.

NOTE: Copies of said timber cruises are hereto attached to this transcript of testimony as Government's Exhibits 1 through 5, respectively, and made a part hereof.

Q. Now, will you take those, one at the time, and identify it by tract and Exhibit No., and give us a discussion of the nature of the timber on it, what you found and what you [Tr. 729] think is pertinent to the timber cruise. A. All right.

Commissioner McFADDEN: Was that timber cruise as of January 3 or 30th?

Mr. MILLER: January 3rd.

Commissioner McFADDEN: All right.

Q. Go ahead, Mr Hannold. A. Tract E-443 contains 429.51 acres. I cruised the timber on this tract and found 135,000 board feet of sawtimber, pine sawtimber, from 8 to 12 inches in diameter. I placed a value of $15.00 per thousand, a total of $2025.00. I found 25,000 feet of oak sawtimber ranging from 10 to 16 inches in diameter. I placed a value of $10.00 per thousand, a total of $250.00. I found 5,000 board feet of gum saw timber ranging from 10 to 12 inches in diameter. I placed a value of $14.00 per thousand, or a total of $70.00. I found 5,000 feet of yellow poplar sawtimber from 10 to 12 inches in diameter. I placed a value of $14.00 per thousand, a total of $70.00. I found 100 units of hardwood pulpwood. I placed a value of $1.00 per unit, a total of $100.00. I found 672 units of pine pulpwood. I placed a value of $2.50 each, a total of $1,680.00. The total timber value on this tract was $4,195.00.

Q. A tract of land with that amount of timber on it, and from what you saw there, how did that tract of land rate

as timber land A. It rated as a cut-over tract of timber land.

Q. For that size tract of land that is not a substantial amount of timber? [Tr. 730] A. No, sir.

Q. If you cut that off to reap that benefit, which would be everything above five inches, what effect would that have on the value? A. It would greatly lower the value of the tract.

Q. That would be an uneconomical cutting? A. Yes, sir.

Q. State whether or not, on this tract—I believe it has more timber on it than any other tract, except one—however, I will ask you right here, all of this was timber land of the Twin City Power Company? A. Yes, sir.

Q. What signs did you see there of it having been cut properly, or improperly, or uneconomically? A. Well, all I could tell you about was recent years, but the majority of this land, and this tract, including the timber, had been seriously depleted, and it will take several years to get it back up to maximum production of timber. A half a stand of timber won't grow as much as a whole stand of timber.

Q. On this size tract, on a half a stand of timber, could you give us an idea on a 449 tract, a 449 acre tract, what a full stand on a tract of that size, what we call a full stand of timber would rate out in thousand feet? If it is easy to do. I don't want to ask you an unreasonable question. A. Well, in general, a woodland area that is managed by a sawmill—I wouldn't say by a pulpmill, but by a sawmill, they usually leave around a thousand board feet per acre in [Tr. 731] cutting operations. They will cut it down and there will be a thousand or more board feet of pine timber per acre left, that is pine saw timber per acre that will be left. Of course this 135,000 feet or 429 acres would be about a third of the stand.

Q. Now, with respect to E-446, on Government Exhibit No. 2, on that you just found an insubstantial amount of 7000 feet of saw timber and miscellaneous hardwood. A. Yes, sir.

Q. Now, where the amount is inconsequential, just be brief with it.

Commissioner McFadden: It would help us, Mr. Hannold, if you would just read them off, give us the acreage and then the timber and the total.

Q. That will be better. Just take each one.

Commissioner Barrett: In arriving at your value per thousand feet, are you bearing in mind the relative accessibility of this tract, or are you just valuing the timber separately?

The Witness: Accessibility probably has the most weight in the value of timber, and of course you have got—— if a man can cut over a small area and get a cut his operation cost is less than if he had to cover a 100 acres to get a cut of saw timber. Also the species has something to do with it. If the majority of the timber is pine wood hay it would bring a better price in a lump sum. In hardwood you have the majority of your better species yellow poplar it will bring a better price, and I did take into consideration all these factors in placing a value that I placed on this. [Tr. 732] In referring to my prices I kept a constant check on timber that was being sold in the area, and also by any information I could get by talking to the pulpwood and sawmill operators in that vicinity.

Q. How about accessibility to roads and highways, does that have any effect on it? A. Well, of course, accessibility is mainly roads, but also these tracts were on rough hill sides and the topography brings in a whole lot, that is, how much is it going to cost to get the timber out. It don't cost as much to get it out where it is on level land as it does on land where you have got to get cats and climb up and down hill sides and snake them out with mules and so forth.

Q. I notice on this that you put a lower value generally on hardwood than you did pine. Will you explain that? A. Well, I didn't set the price. They are set by the sawmill men.

Q. I know that, but why are the prices on hardwood and such as that lower than the prices on pine? A. Well, there is a great demand for pine timber. There are a greater variety of uses for pine in the United States.

Q. The way this particular type of hardwood grows the way it spreads out, where there is gum, oak, poplar and miscellaneous—does that have anything to do with it? A. It does, as I explained. The accessibility affects the price.

[Tr. 733] Q. Which one are you giving us now? Which one are you down to?

Commissioner McFADDEN: E-446.

Q. All right. A. E-446, there were 128.03 acres. I found 7,000 feet of saw timber and miscellaneous hardwood, ranging from 10 to 16 inches in diameter at $12.00 per thousand, a total of $84.00. There were 8 units of hardwood pulpwood at $1.00 per unit, a total of $5.00. I found 132 units of pine pulpwood at $2.50 per unit, a total of $330.00, which gave a total timber value of $419.00.

Q. That is about how much per acre? A. A little better than $3.00.

Q. That is substantially no timber at all on that tract? A. No, sir.

Q. All right, the next one. A. E-457, consisting of 24.26 acres. I found 1000 feet of pine sawtimber, 8 to 10 inches in diameter, at $15.00 per thousand, total of $15.00. Two units of pulpwood at a dollar per unit, a total of $2.00. 25 units of pine pulpwood at $2.50 per unit, a total of $62.50. The total value on that tract was $79.50.

Next is Tract E-498, consisting of 3.2 acres. There were 5,000 board feet of hardwood sawtimber at a value of $12.00 per thousand, a total of $6.00—that's 500 feet of hardwood sawtimber, instead of 5,000 feet, or a total of $6.00. 1 unit of hardwood pulpwood at $10.00 per unit, total $1.00. [sic] 6 units of pine pulpwood at $2.50 per unit, a total of $15.00. [Tr. 734] The total value of timber on that tract was $22.00.

Q. Right there, you just as well define for the record, what is meant by units in measuring pulpwood. Of course, I think everybody here knows, but we had better put it in the record. A. A cord contains 128 cubic feet, and the standard unit they use now contains 168 feet. The length of it makes the difference.

Q. The length is 5 ft. and 3 inches? A. Yes, sir.

Q. And that's because it fits in the boxcar? A. Yes, sir.

Q. Now, the next one, please. A. The next one is G-600, 247.06 acres. I found 15 thousand feet of pine sawtimber from 8 to 19 inches in diameter, at $15.00 per thousand, a total of $225.00. I found 29,000 feet of miscellaneous hardwood sawtimber, from 10 to 12 inches in diameter, at a value of $12.00 per thousand, a total of $348.00. I found 40 units of hardwood cordwood at a value of $1.00 per unit, a total of $40.00. The total timber for the tract of a value of $897.00.

Q. Are there any of those that you want to make any further comment about? A. Well, they are all practically similar as far as being cut over woodland tracts.

Commissioner McFadden: Now, Hannold, referring back to G-600; did you have some units of pine pulpwood?

The Witness: No, sir.

Commissioner McFadden: None at all?

[Tr. 735] The Witness: No, sir.

Commissioner McFadden: You had 15,000 feet of pine sawtimber at $15.00 per thousand?

The Witness: Yes, sir.

Commissioner McFadden: That would be $225.00.

The Witness: Yes, sir.

Commissioner McFadden: And then you had 29 units of miscellaneous hardwood sawtimber at $12.00?

The Witness: Yes, sir.

Commissioner McFadden: That would be $348.00?

The Witness: Yes, sir.

Commissioner McFadden: And then you had 40 units of hardwood cordwood at $1.00, or a total of $40.00?

The Witness: Yes, sir.

Commissioner McFADDEN: That wouldn't give $897.00?

The WITNESS: This was copied, and I think they must have left out something.

Commissioner McFADDEN: Well, my figures don't work out with your figures, so we would like to have it corrected.

The WITNESS: I will have to check with the original file on that. These were copied.

Commissioner McFADDEN: Do you have it here?

The WITNESS: I don't know.

Commissioner McFADDEN: Well, it is not of too great importance, but we were just checking it here.

The WITNESS: But there was a total timber value of $897.00.

Commissioner McFADDEN: A total timber value of $897.00?

The WITNESS: Yes, sir.

[Tr. 736] Commissioner McFADDEN: All right. But there is still $284.00 short somewhere, that is between your itemized figures and your total.

Q. Mr. Hannold, I have five sheets here and I want to ask you if those are a report of your timber cruise as of July 13, 1950, except one, I believe, is dated August 1, 1950, on tract E-449, G-616, G-627 and G-694?

A. Yes, sir.

Mr. MILLER: Now, before I proceed, may we have those marked in evidence as—

Commissioner McFADDEN: F-1 through F-4.

Mr. MILLER: Those are in Civil Action No. 537.

Q. Now, take each one of those, Mr. Hannold, and give the Exhibit number and the tract number and read through them slowly enough—your Honor wants to get these figures down as he goes along, I presume?

Commissioner McFADDEN: Yes, sir, go slowly enough for us to copy them item by item.

The WITNESS: Tract E-449, 5.51 acres. There was no merchantable timber on that tract. Tract G-616, 121.53 acres, 18,000 feet of pine sawtimber, 8 to 12 inches in

diameter, $15.00 per thousand, total $270.00. 276 units of pine pulpwood, $2.00 per unit, total of $552.00; total timber value for this tract of $822.00. Tract G-627, 546.78 acres, 54,000 feet of pine sawtimber, 8 to 17 inches in diameter, $15.00 per thousand, $810.00 total. 14,000 feet of oak saw timber, 10 to 14 inches diameter, $10.00 per thousand, $140.00 total. 9,000 feet of gum sawtimber, 10 to 14 inches diameter, $12.00 per thousand, total $108.00. 12,000 board feet of [Tr. 737] miscellaneous hardwood sawtimber, 10 to 16 inches in diameter, at $10.00 per thousand, total of $120.00. 57 units of hardwood pulpwood at $1.00 per unit, a total of $57.00. 596 units of pine pulpwood, $2.50 per unit, total of $1,490.00. The total timber value $2,725.00. G-694, 10 acres; 5,000 feet of miscellaneous hardwood sawtimber, 10 to 16 inches in diameter, $12.00 per thousand, total of $60.00. 12 units of hardwood pulpwood, $1.00 per unit, total of $12.00. 18 units of pine pulpwood, $2.00 per unit, total of $36.00. The total value of $108.00.

Q. Now, we come to the South Carolina side, Civil Action No. 1033, and there are just two tracts, dated December 21, 1949—there are two tracts in there, and I hand you two sets of papers relating to Tracts F-500 and H-700, is that your cruise as of the 21st of December, 1949? A. Yes, sir.

Mr. Miller: I now introduce these two in evidence.

Commisioner McFadden: Government's Exhibits G-1 and G-2. Tract F-500 being G-1, and tract H-700 being G-2.

Q. Now, Mr. Hannold, take Tract No. F-500 and read it slowly, and if you want to stop and comment on any part of it, all right. There is more timber and it may take more time in detail on that. A. F-500 has 1033 acres. I found 193,000 feet of pine sawtimber, 8 to 18 inches in diameter, at $16.00 per thousand, a total of $3,088.00. I found 60,000 feet of oak sawtimber, 10 to 20 inches in diameter, at $10.00 per thousand, a total of $600.00. I found 120,000 feet of gum sawtimber, 10 to 24 inches in diameter, at $12.00 per thousand, $1440.00.

[Tr. 738] I found 8,000 feet of yellow poplar sawtimber, 10 to 16 inches in diameter, at $12.00 per thousand, total

$96.00. 23,000 feet of hickory sawtimber, 10 to 18 inches in diameter, $8.00 per thousand, a total of $184.00. I found 47,000 feet of cottonwood sawtimber, 10 to 22 inches in diameter, $10.00 per thousand, $470.00. 5,000 feet of ash sawtimber, 10 to 12 inches in diameter, $14.00 per thousand, a total of $70.00. I found 1368 cedar posts, at 10 cents apiece, a total of $136.80. 120 units of hardwood pulpwood at $2.00 per unit, total $240.00. 620 units of pine pulpwood at $3.00 per unit, a total of $1860.00. A total timber value for this tract of $8184.80.

Q. Now, read the other figures on Tract No. H-700 before you discuss it. A. All right. Tract No. H-700 has 497 acres. I found 34,000 feet of pine sawtimber, 10 to 18 inches in diameter, $18.00 per thousand, total of $612.00. 20,000 feet of oak sawtimber, 10 to 16 inches in diameter, $10.00 per thousand, total of $200.00. 35,000 feet of gum sawtimber, 10 to 18 inches in diameter, $15.00 per thousand, $525.00 total. 36,000 feet of yellow poplar sawtimber, 10 to 20 inches in diameter, $18.00 per thousand, a total of $648.00. 8,000 feet of ash sawtimber, 14 to 20 inches in diameter, $14.00 per thousand, a total of $112.00. 13,000 feet of maple sawtimber, 16 to 18 inches in diameter, $10.00 per thousand, $130.00 total. 12,000 feet of cottonwood sawtimber, 12 to 16 inches in diameter, $12.00 per thousand, $144.00. 190 cedar posts at ten cents each, total $19.00. 154 units of hardwood [Tr. 739] pulpwood, $2.00 per unit, $308.00. 614 units of pine pulpwood at $3.50 per unit, a total of $2,149.00. The total timber value on that tract was $4,847.00.

Q. That timber splits up about even, don't it? It is about the same in proportion to acreage? A. It runs about $8.00 or $9.00 per acre timber value.

Q. How was the distribution through that 1000 acres?

A. It was about as evenly distributed over the 1000 acres as you could leave it. It had been cut over, quite a bit of pulpwood had been cut off this tract, and some of it had been cut just prior to the time I approved the—just prior to the time I cruised the tract. It was a rough, rolling tract.

Q. Now F-500, the 1033 acre tract, in your judgment,

could any portion of that sawtimber be economically harvestered on the date you made your cruise? A. No, sir. Probably the only timber that would be harvestered, other than a clearing operation, would be the pulpwood off each tract.

Q. Now, is that substantially so of the 497 acres? A. Yes, sir.

Q. Now the next is Civil No. 1073, South Carolina, July 5, 1950, Tracts No. H-732 and F-541. With respect to F-541, Twin City is interested only in 5 acres of that, but we are not going to attempt to segregate it right now. Now, Mr. Hannold, I hand you two sheets, tract No. H-732 and tract [Tr. 740] F-541, as of July 5, 1950. A. Yes, sir.

Mr. MILLER: May we offer in evidence as government Exhibits these two sheets.

Commissioner MCFADDEN: All right, sir, and they will be identified as Exhibits "H-1 and H-2".

Q. Now, Mr. Hannold, H-732 is 70 acres. Read into the record slowly the same kind of information on that as you have the others. A. Tract H-732 contains 70 acres. I found 4,000 feet of gum sawtimber, 10 to 18 inches in diameter, at $12.00 per thousand, total of $48.00. 1,000 feet of ash sawtimber, 10 to 16 inches in diameter, $15.00 per thousand, total of $15.00. 2,000 feet of cottonwood sawtimber, 10 to 16 inches in diameter, $10.00 per thousand, $20.00 total. I found 24 units of hardwood cordwood at $1.00 per unit, a total of $24.00, which was a total timber value of $107.00.

F-541, 76.16 acres, 105,000 feet of pine sawtimber, 8 to 16 inches in diameter, $20.00 per thousand, $2100.00. 5,000 feet of miscellaneous hardwood, 10 to 12 inches in diameter, $15.00 per thousand, $75.00 total. 8 units of hardwood pulpwood, $2.00 per unit, $16.00 total. 213 units of pine pulpwood, $4.00 per unit, $852.00 total. A total timber value of $3,043.00.

Q. The whole tract, F-541, 76.16 acres, you have a timber value there of $3,043.00? A. Yes, sir.

Q. The bulk of that was what? As I recall it you [Tr. 741]

had hardwood? A. It was primarily pine sawtimber tract.

Q. How much sawtimber? A. 105,000 feet.

Q. The 76.16 acre tract, how was that tract? A. There was a very beautiful stand of pine sawtimber on this tract. It wasn't an old stand. It was comparably young stand, second growth timber, and it was heavily timbered and tall clean timber.

Q. Could that 76 acres, the timber on that tract, was it such by proper cutting as of that date, if properly handled and properly cut from then on, so that you could get a cutting every ten years? A. This tract is in shape where it could be managed as a timber tract.

Mr. MILLER: There is one thing more that I want to ask this witness about, but it is now 12:30, and I was just wondering if we might not take out here for lunch and let me get my stuff together.

Commissioner MCFADDEN: It is perfectly all right with me to recess at this time, if it suits everybody else.

Mr. ROBINSON: It's all right with me.

Commissioner MCFADDEN: All right then we will recess here and come back at 2:00 o'clock.

NOTE: At this point a recess was had from 12:30 P.M. until 2:00 P.M., at which time the proceedings were resumed as follows.

Commissioner MCFADDEN: All right, gentlemen, if you are ready.

[Tr. 742] Mr. MILLER: I want Mr. Hannold to come back to the stand for a few more questions.

Q. Now, Mr. Hannold, from Exhibit 17, I ask you to look at Photograph No. 1 and discuss and describe for the Commission the timber shown in that picture. A. This is a photograph, taken along the Wallace-Dorton Creek Shoals, looking down there on the river. There is a steep bluff along the river on the Georgia side, along this point, and the timber that you see here was small timber, probably 6 or 8 inches, but in my opinion the reason that these trees are

left here is because it would cost too much to pull them up the hill side. The ordinary sawmill man that got to use a log wood tractors in that section, or maybe mules, but it would cost too much to get those trees out here, and that's the reason they are left there.

Q. This large pine over here in the corner of this exhibit looks like a tree down under a bluff here that had been passed by several cuttings? A. I would say it was, yes sir.

Q. And aside from those pines there, this is hardwood under brush of various kind here? A. This whole hill side is covered with a scrub hardwood brush, and never will amount to anything.

Q. Now, just tell the Commission—and this is photograph No. 2—and start with this brush along the banks here and discuss the nature of it and of the island and the view in the back ground? A. Well, this hardwood brush along the river I would [Tr. 743] say is representative of the majority of the land along the river on all of these tracts that we have talked about. There are some few good hardwood trees. The majority of the better hardwood has been cut, and this is brush, small stuff that had been left. You will notice an occasional pine.

Q. What about the nature of the timber on these islands? A. Well, I have fished and duck hunted up and down the river there, and these islands are pretty sandy patches mostly, and there is scrub hardwood brush practically all over the islands, the smaller islands.

Q. Now, this here in the background here, does that look like, or have the appearance of where they have started clearing for the government? A. Yes sir, that is. I don't know how much of this here will be under water along here, and I don't know when these pictures were taker, whether they——

Q. ——the dates are on there. I think they were all taken the same day.

Mr. Robinson: May, 1951.

Q. May, 1951? A. In my opinion this here is uncleared

by the government, that is, the brush hasn't been cleared yet. These contracts were let at various times. Starting at the dam you might get some sprouts and brush that would appear similar to this, however, I believe there are large enough trees in here that just hasn't been cleared by the government but is a photograph of the actual cut-over woodland [Tr. 744] that I found there in cruising the timber on these tracts. Now, this hardwood down here is all small stuff. I don't say it is all scrubby. It is probably gum trees along here and they do have a market value. Upon the hill side here there is some gum but it is all small.

Q. Gum and low brush with probably some merchantable gum down in this corner? A. I would say pulpwood size, but not sawtimber size.

Q. And this picture here. Over in the back ground there that appears to be government clearing? A. That's clearing, yes sir.

Q. In the fore ground, does that appear to be clearing? A. I would say that has not been cleared. It is probably a branch along one of the open bottoms that has grown up in brush.

Q. Now, there is some pine along here, isn't there? A. Majority of this is hardwood, I would say.

Q. I am talking about this corner here? Can you identify this tree from the photograph, these trees here, along here in this corner? A. I think that one there is a pine, and I believe the rest of it is hardwood. It has got some scattered pines along the river bank here that was left here after they had sawmilled it and pulpwooded it.

Q. Does this look like the beginning of government clearing in here? A. I would say that a bulldozer has been operating in here. Now, this is a pretty steep rough hill side here. [Tr. 745] It is also rocky along here, very rocky.

Q. Now, without criticising these pictures, but in taking these pictures of the tops of trees you don't get the slope of the land? In other words, it looks flatter in some places and maybe in some places becoming steeper than it actually is? Is that true? A. Yes, but the fact you

can't see the rocky soil here indicates that it is steep along the edge of the river. That's a representative picture of the area at the time——

Q. You might give the nature of that timber over in the back ground here? A. Well, I would say that it was 90% or more hardwood.

Q. What is this here in the foreground in this picture? A. Well, this, I believe, is where they had started a dam, as I understand it, excavation, and there was a little flat in here, and I would say off hand maybe two or three acres that was leveled here and cleared, I would say, and there was a cable, I think, extended across the river here.

Q. Now, this picture here, this along here, can't be mistaken for a young growth of pine? A. No, sir.

Q. There is some pine trees scattered through this area here, isn't there? A. I can't see well enough on this one.

Mr. MILLER: Well, I believe that is all I care to have discussed about these pictures. The witness is with you, Mr. Robinson.

Commissioner MCFADDEN: All right, Mr. Robinson.

[Tr. 746] CROSS EXAMINATION.

By Mr. ROBINSON:

Q. Now, Mr. Hannold, since 1946, when you came to Lincolnton to report to the Engineering Department, I believe you told us that your interest entirely was in the Clark Hill Reservoir? A. Practically, yes sir. I made a few trips out.

Q. Your principal concern there has been to study the tracts in the testimony before us. your opinion of the value? A. To cruise the timber, yes sir.

Q. Do you have any idea as to how many of these cases you have testified in? A. No, sir, I don't.

Q. Now, you were asked about each of these tracts, and you testified that you valued the first two as of June 19, 1947. Do you mean that you actually made the cruise on that date? A. Probably not, probably a short time before that.

Q. A short time before that? A. Yes, sir. However, those figures here, if there was any time variation, they were brought up to the date of the taking.

Q. Up to the date of taking? A. Yes, sir.

Q. Some of them, you testified to, were appraised as of June and July, 1950, almost three years difference. Did [Tr. 747] you actually visit them both in 1947 and the first suit was started in the beginning of 1950? A. Those that were condemned in 1950 were cruised quite a bit later than those were in 1947. We had the whole area to work, and we advanced by segments up the river, and it takes a lot of time to do that.

Q. Were any of these cruises made after the government had taken the property? A. No, sir.

Q. Now, you appraised a total of about 4500 acres, is that correct? A. In these tracts.

Q. How many of those acres were clear? A. Cleared?

Q. Yes, sir? A. Well, as I said, I believe there are around 80 acres on Price's Island, and there are a few small patches of old field, part of them growing up into brush on some of the other tracts, but I don't believe there was any very large open fields on any of the other tracts.

Q. It was cleared in part at various places? A. Yes, sir.

Q. But most of it was in some kind of timber? A. These small patches had been farmed, and part had reverted back to woods.

Q. Now, after the government took this property, did they sell the timber and pulpwood off it or not? A. Not directly, no sir, as I understand. I didn't have anything to do with it.

[Tr. 748] Q. You mean that all this value that you testified to, the government did not realize anything on it?

A. I think the government realized something from it, yes sir, but not directly through the sale of the timber.

Q. If the government did not get the timber, they got credit against the clearing, is that right? A. I believe that's the way.

Q. You, yourself, don't know about that? A. No, sir.

Q. Now, the bulk of this land, in your opinion, as timber land, as I understand it, had not been well handled with reference to farming and timber purposes? A. It certainly has not, no sir.

Q. That land then is capable of producing a great deal more timber than it actually did produce? A. If given a period 40 to 50 years, yes sir.

Q. You did find one tract, F-541, I believe it was the last one you testified about, where the land had been properly handled for the cultivation of pine timber? A. It had a very nice stand of young pine timber on it. It did have a stand of timber on it.

Q. But it looked like it had been handled much better than the remainder of the property? A. Yes, sir.

Q. Now, properly farmed for timber purposes, what will that land produce in the way of pine timber? A. How you mean?

Q. Well, on a per year basis? Would it produce [Tr. 749] 15,000 feet of saw timber per acre every 15 years?

A. No, sir. I made a few studies myself, and I also contacted four service offices at Greenville, South Carolina.

Q. I would just like to have your knowledge, not what you were told. A. According to studies made, I made out several parts, to try to determine just how fast this timber was growing, and on the best site of that land had a good stand of timber on it at the time. The timber would grow between 3 and 400 board feet per acre per year. However, on a site where, say, there were 25 trees to the acre, it would produce probably some 10 or 20 board feet or less per year. I set up five acre plots, staked them out, and measured them with a tape and numbered everyone of them—

Q. —on the Twin City property? A. Not on that property but in this area. It was partly on land that was similar to the Twin City lands, and part of the land was better than the Twin City Power Company land. One plot showed a good grade, as I remember, 39 cubic feet of timber per acre per year growth. That was roughly a quarter of a unit, and that was on a cut over stand, that would probably be a little above the average of the Twin

City Power Company land. Another acre plot had something between 5 and 6,000 board feet on that acre. It was well stocked. The average age of the trees was 35 years. The average size of the trees was 13 inches, and the average growth rate over that period of 35 years was 161 board feet per acre per year.

Q. Now, Mr. Hannold, the bulk of the Twin City land [Tr. 750] lies along the river, don't it? A. Yes, sir.

Q. And along the creeks? A. Yes, sir.

Q. It was the bottom land in this area, wasn't it? A. Well, probably 90 percent hill side.

Q. Well, didn't you find that the Twin City lands ran along about 11 miles on both sides of the river? A. Yes, sir.

Q. And some of the land in that area produced a good deal of timber? A. Yes sir, that land was capable of producing timber, yes sir.

Q. One of those tracts is the Annie Robertson tract, isn't it? A. Yes, sir.

Q. And that is right in between some of the Twin City land? A. It is at the upper end of the Twin City land, I believe, on the Carolina side.

Q. Are you sure there are no lands of the Twin City above that? A. No, I don't mean that. I mean at the upper end.

Q. At the upper end, right along the river? A. Yes, sir.

Q. The Twin City Power Company owns the island, I believe, right opposite it, doesn't it? A. I don't know about that. I know that Twin City [Tr. 751] Power Company has some forty odd acres in the Annie T. Robertson tract.

Q. You have not appraised that yet? A. Not separately. I did cruise the Annie T. Robertson tract.

Q. But you have not testified to that today? A. No, sir.

Q. Now, what was the timber you found on the Annie Robertson tract?

Mr. Miller: Objection. Until he identifies that Annie T. Robertson tract—well, how many acres in that tract.

The Witness: There were 2600 some odd acres.

Mr. ROBINSON: If your Honor please, I was cross examining this witness. This witness has testified that 40 acres of the Annie T. Robertson land is the Twin City land. Now, I think I am entitled to get the timber value on it.

Mr. MILLER: Well the witness—

Mr. ROBINSON:—he may be in error. He is not testifying about title, but anyway lets get the evidence in and then we will argue about whether I am entitled to have the value.

Mr. MILLER: Well, I think the witness ought to be instructed. The 2600 acre tract—the 40 acres—which I am quite sure they haven't got—

Commissioner McFADDEN: I don't want to interrupt you, Mr. Miller, but of course that remains to be seen whether they have it or don't have it. I don't know whether they do or do not have it, but if there is some question about it, lets find out the value of this 40 acres or 75 acres, or whatever [Tr. 752] the deed calls for, if any, and then we can discard it if the Twin City does not have it. So, lets go ahead with the cross examination. Go ahead, Mr. Robinson.

Q. Mr. Hannold, can you identify, of the Robertson land, the 40 acres which you understand the Twin City Power Company owns on the South Carolina Side? A. No sir.

Mr. MILLER: Objection. I object to him asking this witness a matter of law. He is just a timber cruise witness, and is not an expert in law.

Commissioner McFADDEN: Well, the objection is overruled. Go ahead with the cross examination, Mr. Robinson.

Mr. MILLER: Let the objection run to the line—

Commissioner McFADDEN: Let the record show, Mr. Watson, that the objection of Mr. Miller runs to all questions on cross examination that refer in any manner to what is known as the Annie P. Robertson lands. Go ahead.

Q, Now, Mr. Hannold, you told us that you cruised this property, and you also cruised the entire tract of Annie P. Robertson in South Carolina? A. Yes, sir.

Q. And that land lies along the Benny Field Creek, in part? A. Yes, sir.

Q. And along the Savannah River, don't it? A. Yes, sir.

Q. I believe you told us that it had, at the time the government took it, a fine stand of timber on it? [Tr. 753] A. Over the most of it. There were two or three small pulpwood operators on it.

Q. Now, the area along the river was particularly well grown up in pines, wasn't it? A. That area along the river —Now, this is hearsay evidence.

Q. I am talking about what you saw now. You are the man that cruised this timber? A. No sir, and then I will explain why. The sawmilling operations that I spoke of that were on the Annie P. Robertson tract began some eight months before I cruised the tract, and they confined their operations pretty well to a strip below the 330 contour on the Annie P. Robertson tract, and this area below the 330 contour in the river was in spots pretty heavily cut over.

Q. You couldn't cruise the timber from the stump? A. I wasn't concerned with the timber that was gone, because the government hadn't acquired it.

Q. When did you cruise the Annie Robertson tract? A. I cruised it in, I believe, it was in 1947 or 1948.

Q. I am going to hand you here Exhibit No. 18, which is an aerial photograph, dated February, 1940, and ask you, sheet marked plan QRC-29, or 218, I believe it is— are you familiar with those aerial photographs? A. Fairly well, yes sir.

Q. They were made — the Corps of United States Engineers. A. They were made for the Corps of Engineers. [Tr. 754] Q, And you used them in your cruising and in your clearing operations, did you not? A. Yes sir, I used them in my cruise.

Q. Can you locate the Annie Robertson tract on that picture? A. Is above there.

Q. Above here? A. Yes, sir.

Q. Come around and show the map to the Court. Now, locate on that map this 40 acres of Annie Robertson on the South Carolina side, along the river. A. Now, let's get this straight. I did not separate the 40 acres that the Twin

City is supposed to own of the Annie P. Robertson from the Annie P. Robertson tract.

Q. Show us where the Annie P. Robertson tract is. A. It extends roughly from the Benningfield Creek up the river.

Q. Now, from that picture, sheet 18 of Exhibit 18, would you say that heavy stand of timber along the river there which you identify as the Robertson tract of land? A. It shows on the picture to be a heavy stand of timber. However, as I said before, I believe there three sawmills, a small sawmill here in this area, operated on the Annie P. Robertson tract, and operated approximately, oh, I would say, eight months before I cruised the timber. They quit before I cruised the timber, but our lines, the 330 contour line was marked, the trees were painted with white tracks around them, and these sawmills confined their operations fairly close to this 330 contour line, below the 330 contour, [Tr.755] on the Annie P. Robertson tract, and a good deal of this timber that is shown on this photograph was gone when I cruised the timber.

Q. As I understand it, did you or did you not cruise the timber on the Annie P. Robertson tract? A. I did cruise the timber on Annie P. Robertson tract.

Q. And you cruised the portion that had been cut too, did you not? A. Yes, sir.

Q. Are you in position to tell us whether there was a good stand of pine on that portion of the Annie P. Robertson lands lying up stream from the Benefield Creek along the Savannah River? A. There was a good stand of timber on the Annie P. Robertson tract on practically all portions except what had been cut by the sawmill operations.

Q. And you didn't appraise that that had been cut? A. I went over it, and if there are any trees left on there they are in my cruise report.

Q. But your cruise report doesn't include what has been cut over? A. The trees that were left there are included.

Q. You didn't try to appraise or cruise what had been cut? A. No, sir; I wasn't interest in what had been cut.

Q. Now, how fast do those pines grow on the Annie P. Robertson land along the river? A. I would say probably 200 board feet per acre per year.

[Tr. 756] REDIRECT EXAMINATION

By Mr. MILLER:

Q. This picture that was taken, these pictures here, I think Mr. Robinson said inadvertently that it was taken in 1940. Now, these were taken in 1945, were they not? A. Sometime along in there, yes sir.

Mr. ROBINSON: The date on the pictures is February, 1950.

The WITNESS: I would say that this date here represents the date—These pictures are made up from a composite group of photographs, and these 330 contours, or whatever contours they are, were probably compiled, the pictures were probably put together, and that was probably put on there in 1950. Now the photographs themselves, which are made up of a number of photographs, have the dates on them. I think these pictures here were taken before 1950.

Mr. ROBINSON: I have no information except what was given to me by the United States Representative as of 1950. If you have the correct dates, I will be glad to have it.

The WITNESS: This is the first time I have seen these here.

Q. At the time of the taking, whenever it was, the date of the taking, July 5th, they were cutting down there along the river? A. Yes, sir.

Q. On the Annie P. Robertson land? A. They were cutting. Now, you mean the government was cutting?

[Tr. 757] Q. No. Private sawmill operations just prior to the date of the taking. They were working on this timber down there along the river? A. They were cutting, as I say, and they started approximately eight months before I cruised the tract in 1947 and 1948, and cut up until just prior to when I made the cruise. Since I made the cruise, I don't believe any timber has been cut by anyone except the federal government.

Q. The clearing you are testifying about was prior to the contract, the cutting you are talking about was prior to the contract with the government?— A. It was sold by

Annie P. Robertson to these sawmill owners. I didn't know the names of them.

Q. They were cutting under contract with Annie P. Robertson? A. Yes, sir.

Q. Now, Mr. Robinson has asked you quite a few questions about how fast pine will grow, how many board feet it will grow in a year. Now, that depends, or the answer is that it has to have a good stand of pine timber on it to put on any board feet. In other words, if the pine timber is not there it is not going to put on any feet? A. It is a crop just like corn or cotton. If you plant just a half a stand of corn in a field you can't expect to get a return of a full stand of corn. If you have got a half stand of pine trees, you can't expect to get a full return off a poor stand of pine.

Mr. MILLER: I think that's all.

[Tr. 758] Mr. JAMES M. COX, sworn for the Government testified.

DIRECT EXAMINATION.

By Mr. MILLER:

Q. Mr. Cox, where do you live? A. At Troy, six miles above McCormick.

Q. Is that in McCormick County? A. My back yard is in McCormick County and my front yard in is Greenwood, right on the line.

Q. How long have you lived in that area? A. Since I came out of the first world war, about 32 years.

Q. Where did you live prior to that time? A. Abbeville.

Q. What is your business now, Mr. Cox? A. I operate a furniture store general mercantile store and I run a lumber plant and farms and do a little cattle raising.

Q. Where is your furniture store? A. McCormick, and the general store is at Troy.

Q. Where are your farms? A. The majority of them are in McCormick County.

Q. Can you give us an idea of the number of farms and the nature and different kind of lands you own at the present time? A. I own one tract of 50 acres, which is flat lands; one place of about 450 acres, which is a flat buck shot land. We call it swamps. It is good producing land and is level. I have another place of 150 acres of the same type of land, and another place of 40 acres which is kind-of a red land, [Tr. 759] I would call it, and I have another place of 50 acres in trees, and all of that but the 40 acre tract is in McCormick County. Then I own another tract of 250 acres, about 200 acres of it in McCormick and 50 in Greenwood, and another place of 60 acres, which is right on the line, but I pay taxes in Greenwood on that, and I have another place of 300 acres. That is in Abbey County. I think that is all.

Q. Do you raise any stock on any of those? A. We have about 60 cows.

Q. What kind of stock is it? A. Poor man's white face, all crossed up, not pure.

Q. Do you operate any sawmills? A. Yes, sir, we have four operating in Georgia, one in Abbey County and one in Anderson County and three in Newberry County.

Q. How long have you been in the farming and sawmill business end of it? A. About 30 years of farming, and maybe 26 or 7 years in the sawmill business.

Q. About 26 years in the sawmill business? A. Yes, sir.

Q. Mr. Cox, without going into too much details, you are familiar with the Twin City lands on the South Carolina side of the river, and without going to the map at this time, where would those tracts be located, some of them, with respect to Twin City? A. It is to the right of the railroad and Twin City is to the left.

Q. Twin City is down toward the river from the railroad? [Tr. 760] A. Yes, sir.

Q. And yours is to the right of the railroad going up stream? A. Yes, sir.

Q. Mr. Cox, have you bought and sold property in this area? A. I have bought and sold timber on the Braddy tract, which joins Twin City.

Q. Now, I wish you would indicate on this Exhibit, the Defendant's Exhibit 25, where you sold timber. If it is not on this map, just indicate it. This is Price's Island. Coming up the river here is Annie P. Robertson, and if you will look over here you will find Modock. Where is Modock? A. This is the old railroad here. (indicating on map)

Q. This line represents the old Gilcrest Road? A. Yes, sir. And this is the land in question.

Q. This is Twin City here? A. And it was somewhere back over in this place in here. (indicating on map)

Q. You are pointing northerly of the Twin City tract H 700? A. Yes, sir, its about here.

Q. Now, where is the MaRiner place? A. Just to the left of the Braddy place.

Q. That would be back over here? (indicating on map) A. Back in years gone by I sawed some timber on the Annie P. Robertson, owned by Frank Robertson at that time. That's who I bought from.

[Tr. 761] Q. That was a long time ago? A. Yes, sir.

Q. How long ago was that? A. That must have been about 1935 or 1936 when I bought that. This other was since, just before the Braddy land was taken.

Q. You sawed the land, sawed over the land, just before it was taken? A. Yes, sir.

Q. About when was that, if you recall? A. It happened after my boy got back out of the Army. It must have been the last of 1946.

Q. Have you sawed any other timber down in that section, in this area? (indicating on map) A. Oh, I would imagine so. I have got a couple of boys who are single and they live at home. They push the sawmills to get out. I furnish the money.

Q. You are a partner with the two boys? A. Well, it is all mine, but they get what they want.

Q. In the last few years, Mr. Cox, have you had occasion to buy and sell property in this area? A. I sold it to the right of the railroad, going up.

Q. To the right of the railroad going up? A. Yes, sir.

Q. I would like to know about some of your sales principally in the last few years? A. I bought a tract of land from Britt. It was about, oh, 150,000 feet of saw timber on it, 113 acres, and I paid him $30.00 an acre for it.

[Tr. 762] Q. Were there any improvements on that land? A. No, sir.

Q. 150,000 feet of timber on that? A. Yes, sir.

Q. When did you buy that? A. About 1950, I imagine.

Q. That is located on the other side? A. Yes, sir.

Q. You still have that? A. Yes, sir.

Q. Any other real estate transactions, and I am talking about the general area? A. I have bought and sold a good deal, but it is farther up the river out of this area.

Q. How long have you been generally familiar with the Twin City lands on the South Carolina side of the river? A. About seventeen (17) years, or since about 1935.

Q. About seventeen years? A. Yes, sir.

Q. Prior to December 21, 1929, were you familiar with its tracts? A. Yes, sir.

Q. Were you familiar with these tracts which are shown here as tracts F-500 and H-700? A. Yes, sir.

Q. This is a pretty large tract? (indicating on map) A. This one is about 497 acres here.

Q. Prior to July 5, 1950, were you familiar with tract H-732? [Tr. 763] A. Yes, sir.

Q. About 70 acres in there. Now, are you familiar with this tract of F-541, a little five acre piece up here? A. That is a part of the Anderson tract, isn't it?

Q. Yes. A. I appraised the Anderson tract, but so far as spotting that five acres out, I didn't.

Q. Have you been requested in this case to form an opinion of the fair market value—you can just lay that map down there—of tract F-500 and H-700 as of December 21, 1949? A. Yes, sir. In forming an opinion as to the value I used Mr. Hannold's timber cruises and I used his prices for the reason they were a little higher than mine. You see there was 193,000 feet of pine timber on the 1033 acres, which would be about 200 feet to the acre. One tree standing over here at that corner and one over there would give

you that much value for seed trees, for seeding back, but as far as its value in selling it to a sawmill man——

Q. —well, can you give us an idea of Exhibits G-1 and G-2? Will you take the timber cruise on that F-500, that quantity of timber spread over that much land, can you give us an idea about how many trees that would run to an acre? That would make about $8,000.00 worth of timber? A. Well, I could figure the pine individually. You take the pulpwood down there, it would a little over a tenth of a unit to the acre, no, that's wrong, about two thirds of a unit to the acre.

Q. You say if you had not accepted Mr. Hannold's [Tr. 764] cruise you would not have put that high a price on it? A. No sir. I valued up the land with the timber that was left there. I valued the timber to get a sawmill man to go in and get something out of it, or re-seed it and bring it back.

Q. In considering the value of this land, in forming an opinion of its value, did you take into consideration whether it was included in valuing of the dates or not but it was a part of a larger tract of the Twin City lands? A. Yes sir, but some of it had a little more—or a different grade of land, not eroded much, and I put a value on each individual tract.

Q. But what I wanted to ask you, in putting on the value of each tract individually, did you take into consideration and give what benefit it might have for being a part of a larger tract? A. No, I didn't take that into consideration.

Q. This land that you sold as a whole with this timber on it, in a lump sum, what do you consider is the highest and best use of that land in F-500 and H-700? A. I put F-500 at $24,744.80.

Q. That was that F-500? A. Yes, sir.

Q. And what was your value on that? A. $24,744.80.

Q. That was the value including everything? A. Yes, sir, everything on it.

Q. And what was your value of H-700? A. H-700? [Tr. 765] Q. Yes? A. 497 acres. $12,799.00.

Q. $12,799.00? A. Yes, sir.

Q. Now, in placing that value on there, just roughly what did you take into consideration about that? A. I took into consideration its use, future uses. It is down low, bottom lands, low lands and had not much of it been cleaned up. I think at the lower end, just below where the Twin City was going to build a dam, there was a good strip of bottom lands, oh, five or ten acres, and in kind of a sluice around there was about that much more cleared up land in there, and the rest of it I would say its best use was for timber and for cattle.

Q. Why? A. In the first place, it all had growth on it, the bottom land had growth on it, gum, poplar, hickory, cottonwood and ash, and it would cost somewhere around $100.00 an acre to clean up land like that and re-seed it and put it ready for a pasture, and if a man has got to work that out that way it will take a long time.

Q. Now, the roads in there for timber purposes, are they perfectly adequate for that? A. For timber purposes, yes.

Q. A timber man would not care much about roads? A. No sir. Less roads, less traffic.

Q. When you got that land cleared for cattle and put it on the market, what would it be worth for growing [Tr. 766] cattle after you got it in there—what about the roads for farming purposes? A. They are all right this time of year until around November, but from sometime in November until March it is hard to get in and out there.

Q. The access roads down for the highway, they are not all weather roads? A. No, sir.

Q. Do you have any utilities, rural lights and telephones? A. No lights and no telephones.

Q. What is the nearest highway up there, paved highway, to this place? A. I would say in places two to two and a half miles.

Q. Have you had occasion to buy and sell any lands for farming and cattle purposes of any kind in the last few years? A. I sold one place of about 8 or 900 acres that was a cattle farm, or dairy farm. I bought it and cut the timber off it and resold it, but now it was above this area.

Q. Would it show on this map? A. No, sir.

Q. About where was it with respect to this property? A. About the upper end of that property—it was about 10 or 12 miles northeast of it.

Q. How many acres was that? A. Well, it was 8 or 900 acres.

Q. When did you buy that? [Tr. 767] A. I guess it was in 1946 or 7. I imagine it was in 1947.

Q. Timber land there and dairy land there too? A. Yes, sir.

Q. And you cut the timber off and sold the land? A. Yes, sir. I put eight sawmills in there and cut that out pretty quick and sold it along the last of March,—no, along the last of 1948.

Q. Along the last of 1948? A. Yes, sir.

Q. What improvements were there on it? A. Two big two story houses, a cattle feed barn and a regular barn and a dairy milk barn and a tenant house, and part of it fenced in, a good part of it.

Q. What about its access to paved roads? A. It was on a paved road.

Q. Was it on a paved road? A. Yes, sir.

Q. How much frontage on a paved road? A. I imagine a half a mile on one road, and a third or a mile or a quarter of mile on another paved road.

Q. On another paved road? A. Yes, sir.

Q. What county was it in? A. Greenwood County.

Q. Did it have any utilities? A. Yes, it had lights. I guess that was all.

Q. What did you sell that for? [Tr. 768] A. I sold one little house off for $2,000.00, and I sold the track for $24,000.00, or $26,000.00 total. I bought this from a friend of mine—together—we paid, I think it was $91,000.00 we paid.

Q. You paid $91,000.00 for it? A. Yes sir, we cut the timber off it and sold it for $26,000.00.

Q. It was pretty well timbered, wasn't it? A. We made some money on it, yes sir.

Q. How many acres were there in that tract? A. Around 900 acres.

Q. 900 acres? A. Yes, sir.

Q. Now, did you cut the pulpwood off? A. No, sir.

Q. You just cut the sawmill timber off? A. Yes, sir.

Q. And you sold that tract for what? A. $26,000.00.

Q. That $2,000.00 included that little house and a plot of ground with it? A. Yes, sir.

Q. About what was that per acre? A. Not quite $30.00.

Q. Have you bought and sold any other property in that area up there recently worth mentioning? A. Not in that area, it would be above this.

Q. Now, come down to Civil Action No. 1073, tract H-732, 70 acres, and it has got F-541 in there, a 76-acre tract, [Tr. 769] I believe, but we are only interested in five acres. You appraised both of those tracts? A. Yes, sir.

Q. What do you consider about the 70 acres, constituting tract H-732, as of July 5, 1950? A. I put $1,257.00 on it.

Q. What was the timber on there, if you have it there? A. $107.00, I believe it was.

Q. Spread out over 70 acres? A. Yes, sir.

Q. About what would that amount to, Mr. Cox? Per acre? A. It was all hardwood—that would be 1,000 feet of timber for 10 acres, and about every three acres a unit of pulpwood.

Q. Is that worth going for? A. No, sir.

Q. In putting a value of $1,257.00, did you value that per acre, or did you put on it what it was worth as a whole? A. Yes, sir.

Q. As a whole? A. Yes, sir.

Q. You took the benefit of Mr. Hannold's cruise on that? A. Yes, sir.

Q. How does that look to you and the price on it? A. Well, I tell you, looking at the prices today [Tr. 770] and back two years ago it would not be exactly right for at that time you could sell gum timber and now there is no sale for it.

Q. Well, as of July 5, 1950, you had a sale for gum timber? A. Yes sir, off hand, but I don't remember exactly, but I keep a record book and I can always turn back and get that, and that is the reason I used his figures here on that.

Q. You think he gave it all it was worth? A. Yes, sir.

Q. Now, on F-541, you did evaluate that whole tract? A. Yes, sir.

Q. Could you give us your average per acre on that tract? A. I took five acres of it but——

Q. —see if you can find that for us. A. Well, it is covered with water now.

Q. Here is tract F-541, this five acres there, look right here—(examining map). A. This five acres here, I put a value of $20.00 an acre on it, $100.00.

Q. Now, F-500 was all one tract? A. Yes, sir, all one tract.

Q. That is just one tract A. Yes, sir.

Q. And you took that into consideration? A. Yes, sir.

Q. Then H-700 is all one tract by itself? A. Yes, sir. [Tr. 771] Q. And then this tract 732 is a tract to itself. A. Yes, sir.

Q. Now, if it should be held by the Commissioners in this case that a strip of land along this tract here was owned by the Twin City Power Company adjacent to the river and stretching out there so as to constitute 40 acres, would that enhance the value of tract H-732 and H-700 in your opinion? A. Well, he could connect it together. If a man wanted a pasture he would have a connection there which would make it a little better.

Q. Could you give us an idea what they ought to have for the value if the Commission finds that there is some connection there? A. I don't know whether I would raise it any above that. If I did, it would be small.

Q. It would not be a substantial amount? A. No, sir.

Q. Have you been up and down the low river view end of that Annie P. Robertson tract? A. Yes, sir. I cut some on it in time back, and I went in there to look at some timber bought in recent days and cut it.

Q. Do you know about the timber that was cut off the low lying lands on the Annie P. Robertson tract just before the government took it? A. Yes sir. Mr. Fortner cut off around a million feet. It might vary 200,000 feet either

way, but it was [Tr. 772] in the neighborhood of a million feet below the 330.

Q. He cut a million feet below the 330 countour down to the river? A. Yes, sir.

Q. Did you see that tract after he cut over it? A. I was in there through it once or twice but not for valuation purposes.

Q. From your long familiarity with lands in that area and from your experience, if a strip of land was taken along there, constituting 40 acres, along that river bottom do you think that would be—do you know how far it is across that tract to the river, about how far? A. I don't know, but it looks like it would be somewhere around two miles in there.

Q. Well, this map is scaled right at 10,000 feet, which is just about two miles or a little under, and 2,000 feet, that would leave a strip in there in some places of from 170 to 180 feet deep. I feel quite sure if it was calculated out that would be about right. Now, can you form an opinion satisfactory to yourself, even though you have to put it between limits, as to what that 40 acres would be worth? A. I rather not stick my neck out on that.

Q. You just don't want to stick your neck out? A. No, sir, I don't.

Q. I don't blame you. Now, I want to verify some figures before I turn you over to Mr. Robinson for cross examination. Mr. Cox, what is your initials? [Tr. 773] A. J. M. Cox.

Q. I want to verify your figures now, and I will put them down. Now, your valuation of 1033 was what? A. 1033 acres?

Q. Yes? A. F-500?

Q. Yes. A. $24,744.80.

Q. H-700? A. $12,799.00.

Q. Now, come on down to 1073, tract H-732, a 70 acre tract? A. $1,257.00.

Q. And F-541? A. $100.00.

Q. That is the value of the 5 acre part? A. Yes, sir.

Mr. Miller: The witness is with you.

CROSS EXAMINATION.

By Mr. ROBINSON:

Q. Mr. Cox, when did you appraise this Twin City property? A. Sometime in December.

Q. What year? A. 1949. That was part of it, and the other part somtime in July, 1950.

Q. What part did you appraise in December, 1949? [Tr. 774] A. F-500 and H-700.

Q. You actually went over the land at that time? A. Now, it might not have been that exact date, but it was a date right in there, within five days of it, when I wrote up my report. When I go in there, I take a book like this and put my notes down and come back and work it up.

Q. Have you got that book with you? A. No, I have not got it with me.

Q. You were furnished the date, were you not, when they wanted your appraisal? A. Yes, sir.

Q. But you didn't actually go in there on that date? A. No, sir, but it was within a week or ten days within that time.

Q. Now, I believe you said you appraised the timber with a viewpoint of making a sawmill man's profit on it? A. Yes, sir.

Q. What is that profit per thousand?

Mr. MILLER: Objection. It is immaterial.

Commissioner MCFADDEN: Go ahead, Mr. Robinson.

Q. You said you appraised it? A. Where a sawmill man can go in there and make a living, yes sir.

Q. What is the profit on timber that you say a sawmill man can make a living on? A. Well, now, it is according how that timber is on the ground. In one place you can get it sawed for—I have got one now, one for 26, some 30 and some 32 and some 35 [Tr. 775] according how it is on the ground.

Q. This land, this 800 acres of land you told us about, you bought that for $91,000.00? A. Yes, sir.

Q. How much did you get out of the timber on it? A. Well, you know I run a planing mill too, and I dress it and ship it wholesale, about 250,000 feet a week. Now, I don't remember right now, but somewhere between around—let's see—(witness figuring), around 88 right along at that time.

Q. I know, but you told us that you made a profit, and I want to know some dollar figure you made. A. I think my partner and I made around $20,000.00.

Q. On the timber itself? A. On the timber and land, the whole deal.

Q. The whole deal? A. Yes, sir.

Q. You held it about a year? A. I would say right around a year.

Q. So you say that worked out about a 25 percent profit, as I have figured it roughly, is that about the average profit? A. On that one, but then again it don't figure that much.

Q. You did all right on that? A. Yes, I did all right on that.

Q. Now, when you say these trees were scattered, Mr. Cox, you didn't mean to tell us that on Tract F-500 that there [Tr. 776] was an even distribution of pine trees all over it? A. No sir, but I was just telling you to the acre what it would be, about 200 feet to the acre, I think I am right, and you take a tree that will square eight inches, a couple of trees would make that.

Q. That's right, but you don't mean to tell us that these pine trees were evenly divided over the place? A. Oh, no.

Q. And they were concentrated somewhat, because there was some cleared land on that? A. There was a piece of land in cultivation, a little piece of bottom land below where the Twin City was going to build the dam, and some had been in cultivation right where they were going to build the dam, kinda in a sluice part there.

Q. And a good bit had grown up in broom straw and the like? A. Little pine trees, yes sir.

Q. You said about cutting the timber, that kind of land, to a man interested in raising timber, would leave that timber to re-seed, wouldn't he? A. Well, a sawmill man would

leave that. He wouldn't cut the pulpwood. A pulpwood man would cut closer than a sawmill man would.

Q. You are a sawmill man? A. Yes, sir.

Q. Well, would anybody cut this off except for the government taking it, for a farm? A. That was cut off before I went down there. He [Tr. 777] needed the money bad or had some mighty good reason for it.

Q. You mean to say that had been cut? This timber that Mr. Hannold told you about had been cut off before you went down there in December, 1949? A. Not this, but the place had been nearly dry cleaned before this was taken.

Q. But all of this timber he told you about was on there when you saw it? A. Yes, sir.

Q. Do you know whether the government sold it later or not? A. I understand they let it in the clearing. The man that cleared it, got the timber.

Q. Now, you spoke of clearing this land for pasture purposes? A. Yes, sir.

Q. There has been a great increase in this area and your area of the state both in the growth of pine and the pasturing of cattle? A. Yes, sir.

Q. In recent years? A. Yes, sir.

Q. In fact, that has become one of the most profitable form of farming, hasn't it? A. If I had a place of pine trees I sure would not root it up to raise cows. I would leave the pine trees.

Q. You would leave the pine trees? A. Yes, sir.

[Tr. 778] Q. And I believe you told us that it would cost about a hundred dollars to clear and reseed the tract? A. Yes, sir.

Q. Do you divide that between clearing and re-seeding? A. I was just giving the average figure on the average land.

Q. I understand. A. I would say about 40 or 50 or $60.00 for clearing and about $40.00 for fertilizer and reseeding it.

Q. That would apply to these Twin City lands? A. Yes, sir.

Q. In other words, if you wanted to break that down, and I am not saying that you should, but if you wanted to con-

vert it into pasture land, you figure that it would cost you about a hundred dollars in round figures? A. Yes, sir.

Q. What would the land be worth after you had done that? A. I just don't know of any pasture lands around in my neighborhood that has been sold and I wouldn't put a price on it. I have got a bunch of it myself. I have spent a heap of money on it.

Q. In other words, from your experience you are not in position to value what pasture lands are worth. A. What pasture lands are worth, I wouldn't want to put a value on it.

Q. You wouldn't want to put a value on it? A. No, sir. [Tr. 779] Q. That kind of clearing is clearing out the stumps and fixing it ready for pasture? A. Bulldozer, yes sir.

Q. Now, what you have done practically in these cases, as I understand it, the effect of what you have done, is after making an allowance for Mr. Hannold's timber and pulpwood, which I understand you accepted at face value? A. Yes, sir.

Q. You deducted that amount, and then you put about $15.00 round figure? A. I figured the big place at around $23.95 an acre.

Q. That includes the timber. A. That includes the timber that Mr. Hannold said was on there.

Q. $8180.00? A. Yes, sir, that includes what he said was on there.

Q. If you take that off it works out at about $15.00 an acre? A. Yes, sir.

Q. You done about the same thing—— A. Fifteen or sixteen dollars an acre.

Q. You got about the same thing on the rest of the timber? A. Yes, sir.

Q. Now, this five acre tract, you valued that at a $100.00 didn't you? A. Yes, sir.

Q. What was Mr. Hannold's figure for timber on that 70 acre tract? [Tr. 780] A. 70 acres?

Q. Yes, the Anderson property? A. Oh, I haven't got it.

Q. Well, was there as much timber on this five acres as there was on the rest? A. As well as I remember, that was down in the bottom and you had your hardwood mostly down in there, and your value for hardwood is less than the value for pine.

Q. Well, I have got a figure of $3,023.00 that Mr. Hannold put on the timber there. Is that your recollection? A. I went over that 70 acres—well, I just couldn't say about that.

Q. Well, if he figured $3,023.00 for the timber on the 70 acres that would be $42.00 an acre for the timber, wouldn't it? A. Part of that land, the Anderson tract, was covered with pine.

Q. Mr. Hannold, as I understood him this morning, distributed his timber evenly over it because he couldn't do any better. Therefore, do some multiplying on the 70 acres at $23.00 and tell me if it works out at $43.00 an acre? A. That was Mr. Hannold.

Q. Did you tell us a while ago that you accepted his estimate? A. Yes, sir, I said his estimate, but I haven't had his estimate on this five acres. If he will give it to me on this five acres and sign it then I will accept it, but up to that day I am going to accept my own. The majority of it [Tr. 781] is hardwood.

Q. Well, now Mr. Cox, haven't you got a signed estimate from Mr. Hannold for each one of these tracts? A. Yes, sir.

Q. Have you got one on the Anderson tract? A. No, sir.

Q. You haven't got one on the Anderson tract? A. No, sir.

Q. Well, if Mr. Hannold puts $43.00 for the timber per acre, and you come along, as I understand it, you put $20.00 an acre for timber and land? A. Well, now I tell you, mine was a guess as to where the land was. On that five acres I could be wrong, but on the rest of it I stand put.

Q. Well, you testified here under oath about this five acres, didn't you? A. I certainly did, and I put my value on it.

Q. But you didn't consider any timber? A. I didn't put Mr. Hannold's value on it.

Q. You didn't put Mr. Hannold's value on it? A. No, sir.

Q. You have been testifying consistently for the government in these cases, haven't you? A. Since about 1948.

Q. How many have you testified in? A. I would imagine three down here and maybe twelve over there.

Q. Your testimony has been consistent with this all [Tr. 782] the way through? A. It has been my personal opinion all the way through.

Q. Your values have run at about what you have given us today for other lands? A. It is according when it was appraised. Land today is worth more than land was in 1949. If land was appraised now it would be worth more. Land appraised in 1949 and 50 was worth more than it was in 1948.

Q. Any appreciable land for sale in McCormick County now? A. No. Not since this dam was put through there. People bought out over here had to move over here and buy land. To give you an idea, I bought a tract of land up in Anderson County for $20.00 an acre. I cut around 5 to 700 units of pulpwood and around 150,000 feet of timber. That saw timber was worth around $25.00, and pulpwood there in about four miles of a railroad station ought to be worth about $3.00 or $3.50. I couldn't buy anything like that in McCormick County right now. Yet McCormick is more hilly, but people lived there all their lives and they don't want to sell out, and various things like that caused——

Q. —Mr. Cox, when did that rise start in the price of land in McCormick County? A. I imagine it started in 1948 and kept going.

Q. And I believe you said that you had just bought some saw timber in Anderson County? A. Yes, and in Abbey County too.

[Tr. 783] Q. You paid $25.00 per thousand? A. The man thought he would get $25.00 for it, but I hope he is a little bit under. I hope he don't get that much.

Q. How long ago was that? A. Monday.

Q. You can't buy it at that satisfactory price in McCormick? A. Land, you can't buy the land.

Q. All right.

Mr. Robinson: That's all.

REDIRECT EXAMINATION.

By Mr. MILLER:

Q. Mr. Cox, I hand you Government's Exhibit H-2, which is Mr. Hannold's timber cruise on that in 1949, and call your attention there to the sawmill and the hardwood relating to that tract and see if that changes your judgment any about where the hardwood was and whether or not in the light of that you would like to make any changes in your opinion about those five acres? A. I remember this pine timber and everything on there, but that was my honest opinion.

Q. Now, Mr. Robinson asked you about appraising for the government, you have appraised a good deal of tracts in that area that have not gone to trial? A. Yes sir, three to one or four to one that have not gone to trial.

[Tr. 784] Q. And you know it is the practice of the government to get the opinion of local people about the value of land in the community when they file these declarations of taking? A. Yes sir. When I go in I put a value on it that I think it will bring, and that's the top value, because I never did like for the government to take away anybody's stuff.

Q. Did anybody for the government ever suggest to you anything about what your opinion should be, or criticise it?

Mr. ROBINSON: I move to strike that.

Mr. MILLER: I think it is perfectly good redirect.

Commissioner MCFADDEN: Go ahead.

Q. Now, one or two more questions. Now, with respect to this 900 acres, Mr. Robinson asked about this profit you made in cutting this timber off, sawmilling it and running it through a planing mill. I will ask you whether or not a good many years experience and judgment went into the sawmill and planing business to make that profit? A. Yes, sir. That was sold to the highest sealed bids. Mine was the high bid. Mr. Carpenter and I spent a week in there looking it over.

Q. Now, when you sold this 900 acres off for $26,000.00 with a dairy farm, how did that timber land that you cut off

for saw purposes, how did it compare as to the timber you left on it with the average tracts that you have testified about here? A. Well, I tell you, I didn't pulpwood this, and it will come back much quicker.

[Tr. 785] Mr. MILLER: I think that's all.

Commissioner BARRETT: I want to ask you a question, Mr. Cox. That $25.00 per thousand, that was just for the timber?

The WITNESS: Yes, sir.

Commissioner BARRETT: That did not include the land?

The WITNESS: No, sir.

Commissioner BARRETT: How far down did you cut it?

The WITNESS: Ten inches.

Mr. MILLER: Do you want to take a quick recess before I put the next witness on the stand?

Commissioner MCFADDEN: Yes, suppose we take a ten minutes recess.

NOTE: At this point a recess was had for about fifteen minutes, at which time the proceedings were resumed as follows.

Mr. MILLER: I want to put Mr. Cooley on the stand. He is the Staff Appraiser that evaluates all these tracts on both sides of the river. I have Mr. Bell and two local men to put on the stand. They want to get away. It won't take long with them. We can't finish tonight no way. Mr. Bell has just told me that he has arthritis and wants to get away. I will have three brief witnesses left for tomorrow morning and then I will be through.

NOTE: Discussion as to adjournment.

Commissioner MCFADDEN: All right, Mr. Miller, you may call your next witness.

[Tr. 786] MR. SPENCER R. COOLEY, Sworn for the Government, testified.

DIRECT EXAMINATION

By Mr. MILLER:

Q. Mr. Cooley, where were you born and raised? A. Mississippi.

Q. Did you have anything to do with farming down in Mississippi? A. Yes sir, I was raised on a farm. My father owned a 360 acre farm and we operated a sawmill and logging business.

Q. With the farm? A. Yes, sir.

Q. Did you have any higher education? I mean other than high school? A. Yes, sir, I finished with a Bachelor of Science Degree from the Mississippi Agricultural and Mechanical College in 1923.

Q. While you were in College did you have any practical experience in vocation on your father's farm connection and at college? A. No sir, I stayed at college until I finished. I worked, however, while I was in school in the dairy part and paid part of my expenses.

Q. And you graduated in 1923? A. Yes, sir.

Q. And then what did you do? A. Started teaching vocational agricultural in high school.

Q. How long did you do that? [Tr. 787] A. I taught vocational agricultural altogether for six years, but two years of that was in North Carolina. Then, after that, I was County Agent of Humphries County, Mississippi, for six years.

Q. Roughly, what were your duties as County Agent? A. Well, as County Agent I advised the farmers as to the varieties of crops best adapted to that section. Actually, a County Agent's work is more or less of a liaison officer's between the experiment stations and the farmers.

Q. That was down in Humphries County, Mississippi? A. Yes, sir.

Q. Any timber down there involved in that? A. That County was in the Mississippi Delta along the Yazo River, and there was hardy operations going on.

Q. That brings up to about what date? A. That brings us up to about 1935.

Q. Then what did you do? A. I next took a job with the Federal Land Bank. Now, actually, the Federal Land Bank work came in between this and part of my schooling and teaching experience but in terms of years, why, I worked with the Federal Land Bank about three years as a land appraiser.

Q. Now, just stick to your appraisal experience and what appraisal experience you have had, coming this way from that Land Bank Experience? A. Well, after that I worked as an appraisal for the Corps of Engineers, and my first work with the Corps of Engineers was on the "Wappello" dam and reservoir in Missouri. [Tr. 788]. I was Chief Appraisal on that project, and then I went from that project to the Udor Flood Way in Louisiana, and from that I went with the Department of Agriculture as a flood damage appraisal. The Department of Agriculture at that time was making what is known in official circles as a flood control survey. The purpose of that was to determine and ferret out the various water sheds in rivers and valleys that were subject to flooding and which also had potentialities from the standpoint of protecting them floods and increasing their utilization.

Q. In what localities did you make studies and plans in that matter, in connection with that? A. That was in Missouri, Kansas, Texas, Oklahoma, Arkansas and Louisiana.

Q. All right. A. Then I came back with the Corps of Engineers about the time the Corps of Engineers took over the land acquisition for the Army during the War. In other words, it was right before and the beginning of World War II.

Q. This was along about 1939 or 1940? A. That was about 1941 or 1942.

Q. How long did you appraise there? A. I have been in it every since.

Q. From 1941 and 1942 until the present time where have you appraised land? A. Well, I first started appraising with the lower Mississippi Valley Division, which included the state of Mississippi, Louisiana, and parts of Arkansas and Missouri and Tennessee, and then later I went over to Dallas, [Tr. 789] Texas and appraised on the Bennison Dam and Reservoir, which was the only one as I understand was continued under construction during the War. I appraised the land on that reservoir area and also in the southwestern states for military purposes scattered about, but primarily though on the reservoir work, and then after

that I came over to what is known as the South Atlantic Division, which covers the Southeastern states.

Q. About when did you come over here? A. In 1945, the summer of 1945, and I have done a little appraisal work for military purposes scattered from then up until the present, but at the beginning of 1946 I was stationed on the Clark Hill Project, and my duties were primarily in connection with Clark Hill Project. However, occasionally they would call me out on some other word. I was supervisor and appraisal, supervisor of appraisals on the project from the start.

Q. From the start, about when was that? A. Well, the first work that I did, I did preliminary work up there in the fall of 1945. That was just getting ready. In other words, making up preliminary reports of real estate in the area and submitting that. That was in the fall of 1945, and then I was permanently attached along about February, 1946. In other words, the project was opened and I was stationed there.

Q. Now, in supervising appraisals, do I understand that you made or did practically all of the appraisal work for the Clark Hill Area other than power purposes? [Tr. 790] A. Yes, sir. Among my duties were to make an assignment of appraisals. In other words, keep up with the work and assign out other appraisers, and of course I did a lot of it myself. In fact, the supervisor department was minor compared with the actual work I did. It was just incidental. I had to have somebody to keep check on the appraisals and the property that was being appraised. That was largely my duties. Now, I didn't officially approve the appraisers. They were approved by the Division Chief Appraiser, who was in Atlanta. I examined the appraisals that were made by other staff appraisers and made recommendations. I examined them more or less as to technical accuracy, that is the technical requirements of the form of appraisals and I sent them on up to the Division Chief Appraiser.

Q. This Clark Hill Project that extended up both sides of the River, the Georgia and South Carolina side of the Savannah River, over what period of time were you exclu-

sively on this project? A. Well, I would say that I was on it 90% of the time from 1946 up until the end of 1951.

Q. Now, generally, and this will save time when you come to the appraisal of particular tracts, what did you do in preparing—describe some of the work involved in making these appraisals and in preparing to make the appraisals, such as the feel of the market and the like, beginning over that period of time? A. I contacted the real estate people in the [Tr. 791] general area, farmers and people who had bought and sold real estate in the general locality. I also examined the records in the various counties that were affected by the reservoir and listed the sales. From time to time I kept those current as time went on. Of course, as new sales would come in periodically I would go to the court house and take those off and view some of the property, but not all of them, but those that were in reasonable close proximity to the area I would try to see the property, to see what type of property was being sold and the prices that it was bringing and the conditions under which it was sold, and try to find out who was buying and their purpose in buying, in other words what went to make up the market, and also examined from time to time offers of properties when I would hear that property was being offered for sale. I would go see the property and find out what the asking price was, and in that way I informed myself as to the market. Naturally, I couldn't do all that in the beginning, but as time went on I became more versed in the conditions and I wouldn't say that I was good enough to go into an area and immediately begin appraising land, although I was trained in that field.

Q. During this five year period from 1946 to 1951, as I gathered it, you generally kept up with the market on the various types of land involved here in the beginning of your work? A. Yes, sir.

Q. Mr. Cooley, in addition to that, as time went on, [Tr 792] did you have additional reasons or occasions to discuss land with the property owners, with attorneys representing property owners, and other such matters, if so, give us some of the instances in addition to your ap-

praisal work during this five year period? A. Well, we made it a practice to contact the owner of the land and discuss the land with him. We wanted all the information that we could get about the land from the owner that he had, and let him point out any particular feature that he thought might be of interest and then at times I would be called in in the process of negotiations, if there was any questions about how many acres of land was in timber or was in crop lands and whether the line took a house or did not take a house and matters of that sort, in order that the landlord and the government Agency might have a meeting of minds as to what the government was taken and what it was not taking, and quite often I had occasion to discuss with the owners of the land and owners' attorneys.

Q. Now, specifically, in answering this question, I don't want any prices or discussion, but have a good many of these tract settlements been negotiated up until the present time? A. Yes sir, a good many of them were negotiated.

Q. You don't happen to have a percentage figure that you could give us on that, have you? A. Well, it would be an estimate. I do recall that at one time, one particular percentage at one stage of the [Tr. 793] acquisition program the percentage that was required by direct purchase was 82 percent.

Mr. Robinson: May I inquire if that was before or after condemnation proceedings were started?

The Witness: Well——

Q. That would include both before and after settlement, wouldn't it? A. Well, at that time there were very few tracts, as the 82 percent would indicate, had gone into condemnation. That was from the beginning of the project up to a certain period.

Q. That doesn't cover the whole project? A. No, sir, that doesn't cover the whole project. That is the reason I gave you the figure as brought up to that time, otherwise I would just have to say from my general knowledge of the

rogress of this work—I mean the percentage I gave would ust be based on a general proposition.

Q. You haven't got the particular date? A. Well, I don't emember the particular date, but I remember the percentge.

Q. And it wouldn't be applicable to the whole area? A. No sir, it would not be applicable to the whole area, as I stated. There were a few cases which had gone into condemnation and actually had been condemned by the government, and there were others that were still in the negotiating process, but they were not counted on this 82 percent. The 82 per cent were those actually signed and accepted options at that stage.

[Tr. 794] Q. And still some signed and accepted options still go into condemnation in respect to title? A. Yes, sir.

Q. For title defects? A. Yes, sir.

Q. What I want to get at, Mr. Cooley, did that lead to a substantial checking and reviewing of appraisals and discussing these matters with the owners? A. Yes, sir.

Q. And witnesses for the owners, too, sometimes? A. Yes, sir, and we assisted in every way that we could to do a good job.

Q. Now, as these people settled and declarations of taking filed and people moved out of this area, did that give you an occasion for keeping up with the market with respect to offers where these people bought? What did you find in that respect? What did you do about that line? A. I did, with the idea of keeping up with the offers and keeping the feel of the market as to what was being offered and the prices asked, and of course, incidentally, if I saw an offer and I examined the property and I knew the landowners that might be interested in that particular property I would refer him to the owner of the land tell him about it, and describe the land to him so he wouldn't have to go to the trouble of looking at it, if he wasn't interested in it. It was just incidental, of course, with the other work. But it did, however, kind-of give me a touch with the buyer and the seller. I learned in that way what the buyer wanted and [Tr. 795] what the seller was trying to sell and it aided me

in keeping in touch with the market and the feel of the market, in other words to see what it was.

Q. In these five years that past by, were some sales affected in that manner, as the five years went by A. Well, I, of course, didn't personally——

Q. Well, I don't mean that the sales happened that way, but you knew about it and kept in touch with it? A. Yes sir, I did know of a few that were consummated in that way.

Q. Where was your headquarters during that five year period? Where did you stay? A. At first the headquarters office was in Lincolnton County, and in the beginning I lived in Lincolnton for about six months, and then I moved over to McCormick, in McCormick County and lived there and worked the area.

Q. You lived at Lincolnton for about six months when you first came up here? A. Yes, sir.

Q. And then you lived in McCormick? A. Yes, sir, from then on until January, 1952.

Q. January, 1952? A. Yes sir, in other words, at the end of 1951 I moved to McCormick.

Q. You just lived with this property over that period of time we are talking about? A. Yes sir, I had very little time for anything else.

Q. Will you tell us the method of your appraisal of [Tr. 796] this property and also in testifying, what do you try to find with respect to this property, the appraisals and opinions of value? What is your average approach? A. Well, my purpose is to try to find the fair market value of the property as of the date of taking by the government, which is based on what a willing buyer, who did not have to buy, and a willing seller, who did not have to sell would get together on the price on which they could consummate the trade.

Q. And you are trying to form your own best judgment as to that? A. Yes, sir.

Q. In testifying in this court and in this case or in any other case where you may have made an appraisal the fact of all these dates in the light of all of these experiences

that have taken place in the five years, when you testify in court as to an opinion of the value from June, 1947, then you are testifying as to your opinion of now? A. Yes sir, I am testifying as to my opinion as of now in view of all the experiences that I have had.

Q. If anything arises in these years of experiences or study of this land any fact which causes you to change your appraisal is there any hesitancy on your part in making an adjustment out of your experience and discovered facts, or what not? A. No, sir.

Q. Mr. Cooley, the lands involved in this list of civil actions—coming first to the South Carolina side of [Tr. 797] the river—no, the Georgia side of the river, just tell us generally what occasion you have had to—Strike that question, Mr. Reporter. I will change the question. The tracts in these various civil actions here, the tract numbers appearing on Defendant's Exhibit No. 25, on both sides of the river, as of the date of the taking, what opportunity have you had and taken to study the physical nature of that land? You are perfectly familiar with Exhibit 25, are you not? A. Yes sir. I went on the land before the land was taken on condemnation proceedings. I then went on it after the condemnation proceedings, and I formed my opinion as to the value individually on one or two of the tracts—I don't have my notes on those particular tracts as to that appraisal before negotiations were entered into, but my appraisal was based on the accumulation of information I gained up until, well, last week, when it was known that this case was going to be set for trial—well, last fall I believe there was an attempt to set the case for trial, and I did make at that time a review of all the tracts but just before I got through and was ready to write my report I was informed there would be a delay, and other work was pressing at that time so I didn't keep my report until—well, within the past month, I actually formed my opinion within the past thirty days as to this property, my final judgment and opinion as to the value of this property.

Q. Now, could you give us an idea, and I am talking about any prelimnary survey you made of this area when you

[Tr. 798] first came up here as well as coming down to the date before the taking, therefore about how many times had you might have been over this property, your best judgment about it, before the taking in this case? A. Well, once, one time. Well, on one or two of the properties I did go back over a second time because there was a question of timber cutting in the interim, and I revisited the property to see whether or not the cutting demanded an adjustment.

Q. And subsequently, after the date of the taking and before the flooding of it, you checked on all of that? A. Yes, sir.

Q. You have been over it how many times? A. Well, I would say on two of the tracts, as I recall, I was over them twice before the taking, and the rest of them I was over them once.

Q. And after the taking? A. And then after the taking I was over all of them one time.

Q. Mr. Hannold has worked with you on this from the timber angle of it? A. Yes, sir.

Q. In addition to all of your own experiences, you had the benefit of his timber cruise? A. I don't have a copy with me.

Q. But you had that benefit, the benefit of it? A. Yes, sir.

Q. And you placed reliance in making appraisals on his timber cruises and inspections as to the condition of [Tr. 799] the timber as of the date of taking? A. Yes sir, I accepted it. I always make an examination with a view of satisfying myself as to the cruise. I cruise timber myself. I don't just accept anybody's cruise because it is a cruise, but I look over the property generally and if I don't see any reason for questioning it, I accept it.

Q. Generally, you have found Mr. Hannold's cruise correct, and you accept it? A. Generally, I have found no fault in his cruise.

Q. Generally, how does Mr. Hannold's cruising compare with respect to the experienced sawmill men in this area, if you can say? A. Well, I have heard a few men, landowners, who had sold the land, after he had cruised the timber, and heard them talk and heard them say they thought the cruise was representative of the timber that was on the tract.

Most of them want to know the amount of timber that was found by the cruise before they trade. Several of them said they would like to get Mr. Hannold to cruise it for them.

Q. Now, what did you particularly take into consideration—without going into too much details of each tract as to the valuation, can you give us the matters that you took into consideration in placing a value on all of these tracts here that we are interested in as shown on Defendant's Exhibit No. 25? A. I believe I can make it clearer and easier to the court to just read what I did do.

Q. Do that then. [Tr. 800] A. The location of these lands is on both sides of the Savannah River in Lincoln County, Georgia, and McCormick County, South Carolina. They are from 25 to 35 miles north of Augusta, Georgia, the primary market.

The roads that reach the lands are dirt, unimproved. They are difficult to travel after rains. It is from 1 to 4 miles from the lands to paved roads. No telephone lines, power lines, railroads, RFD or school bus serve this land.

Now, parenthetically, there are no people living on the land and therefore there would be no occasion to have these services out there. Population on adjacent lands is sparse. Cleared arable small patches of land are gradually growing up, reverting to woods.

Cultivation was noted on 10 acres of first and second bottom land on Tract F-500 and 80 acres on Tract E-439, Price's Island. These cultivated lands are fertile. They produce good crops of corn and hay. Their economic value, however, suffers from floods and threats of floods, also from poor location.

Bottom land reverting to woods comprises several narrow patches near the river. Their economic value to the whole suffers because they are scattered. They are difficult to reach and considerable sand has been deposited on them by the river overflow.

Bottom woods and swamp lands are occupied almost entirely by hardwoods. Their economic value suffers from poor accessibility, by reduction of the stand to that largely of cull trees and non-merchantable undergrowth, by poor

drainage and sub- [Tr. 801] jectively to flooding and by its poor potential for development.

Upland, old fields reverting to woods, comprise small scattered patches of very small significance. They are covered with pine seedlings. Their best economic value is for timber growing.

Hills and slopes comprise the large bulk of the lands. Nonmerchantable pine reproduction under 5 inches in diameter, breast high, is mixed with and crowded by hardwood brush. The stand of pine reproduction on the whole is poor averaging not more than 20 to 30 per acre. Its highest value is based on timber growing potential.

To prevent un-economic depletion of the stand, no substantial amount of timber should be harvested from this land during the next 15 years at which time under average management there may be an average of 1,000 board feet per acre harvested without depleting the potential below its present status. About ¾ of the harvest would be pine and ¼ hardwood.

Cattle raising potential was given considerable study. The lands were examined to see if any areas may have any promise of adaptation for cattle raising in conjunction with timber growing. Tract G-627 has some possibilities because it touches the outer edge of a neighborhood which has roads, electricity, RFD and there is a definite trend of expansion of cattle raising. The heavy expense of converting any substantial amount of this land to cattle raising at this time precludes any practical enhancement of value for this purpose. [Tr. 802] These lands cannot compete in the land market at present with farms which are well located and may be handily converted from crop farms to cattle farms at much lower cost to the purchaser.

Demand is strong for lands of this nature for timber growing purposes. The pulpwood companies are the most active purchasers of this type land. They have not shown much interest, however, in hardwood reproduction such as that found on about 15% of these lands.

Now, as to a discussion of sales and the manner in which I used the sales, the weight that I gave to them, I have this to say——

Q. Just read your basis. A. Yes, sir. The sales included herein were selected from a much larger list of sales all of which were studied in connection with my appraisal work on the Clark Hill Project which ran almost continuously from the end of 1945 to 1951.

Q. Let me interrupt you there just a minute. Could you give us just roughly, that is, a rough estimate, of the total number of sales that you looked into on the Clark Hill Project? If that is unreasonable, say so. A. Well, it is not unreasonable when you said roughly. I would say altogether between 150 and 200 sales.

Q. Those did not include government sales? A. It was sales between private parties or corporations.

Q. In addition to that a check was made and none of those sales were made under forced conditions, or judicial sales and all like that? [Tr. 803] A. Yes, sir, as much as we could check and find out from talking with the owners and from the best information that we could get. We excluded anything that had the appearance of being such.

Q. All right, go ahead. A. The sales in 1945 and 1946 were given practically no weight in arriving at my conclusions as to the value of the Twin City lands. They are included herein primarily to show the upward trend in prices of comparable lands during the period. The upward trend of the market is a significant factor in forming my conclusions as to value. Because of the marked similarity of the Twin City Power Company tracts, I am not making separate comparisons. In forming my final judgment I did value the tracts separately as of the date of taking. If, for example, Tract E-434 had been taken July 6, 1950, in the same physical condition as it was when taken June 19, 1947, it would have been valued higher. If I had formed my judgment, however, on June 19, 1947, I would not have had the clear cut conception of the trend of the market as I now have. I did, therefore, give considered judgment to the trend in fixing the values as of the date of taking.

By 1950 the Government acquisition program had advanced to the point that practically all the land of the type comparable and near the Twin City lands had been, or was

in process acquired. Therefore, there were practically no sales to draw from during 1950 for comparison purposes. This was particularly true in Lincoln County, which has a higher proportion of improved farm lands than McCormick County. The [Tr. 804] average price paid per acre for rural lands including farms in Lincoln County for the year 1946—I don't know whether you would want me to put that in or not.

Q. I think you had better come down to specific sales, so leave that out. A. Well, I think this statement here would be all right. "The average prices in McCormick County ran approximately $2.00 per acre higher. This may be attributable to better roads and better Forest Fire prevention in McCormick County. Soils and topographic conditions are little more favorable in Lincoln County."

Q. Now, Mr. Cooley. Have you selected certain sales which you think are comparable to this property that would be of assistance in arriving at the value and in judging the value you have placed upon it? A. I have selected sales here, and I have noted in connection with each one of them, the weight, the relative weight, that was given those sales in forming my conclusions as to the value of the Twin City properties.

Q. Have you followed those sales on the map? A. Yes, sir, I have. I have the dates, deed book, page, acres, consideration, price per acres, relative weight and etc. On the map, I only have the approximate location on the map, the total acreage, the year taken and the price per acre, too.

Q. Now, if we will hold this map up here, can you discuss these sales, giving first the deed book, page, and the name of the parties, then the location and then a de- [Tr. 805] scription of the comparable features and then the price.

NOTE: Witness and Government Counsel Examines Map.

The WITNESS: This is the sale of a tract of land down the river from the Twin City Power Company lands. That sale was made in 1949 and consisted 285 acres.

Q. Give us the deed book and name of parties on that sale. A. The grantor was W. J. Hines. Grantee was T. C. Faulk-

ner, dated recorded January 10, 1949, Deed Book Number 17, Page 289.

Q. Now give us the location of that tract, and how far down the river the comparable features, and—— A. — that is approximately three miles down the river from the Twin City Power Company lands.

Q. What are the comparable features as to the Twin City Power Company? A. Well, as to topography and soils and location it is comparable to Twin City lands generally. It had, I believe, a little better reproduction stand of timber.

Q. Were there any improvements on it? A. There was an old abandoned house.

Q. It had no value? A. No, sir.

Q. What was the purchase price on that sale? A. The total purchase price was $4,275.00. The price per acre would be $15.00.

Q. 285 acres involved? A. Yes, sir.

[Tr. 806] Q. Does anyone have a red pencil. On that one that you have just discussed, Mr. Cooley, write No. "1" after that so we can keep track of them. A. All right.

Q. All right, now the next sale. A. The next sale was from—incidently the one I have just related was in McCormick County, and the next one will be in McCormick County, and I will have to pick them out. I actually did not include those in my list here, but they are still on the big list. The reason I didn't include them was because they were made in 1945, and my purpose was to show that lands were low in 1945 and that they moved up.

Q. Were these sales down here, written right under here, were they in the general area as sale No. 1? A. Yes, sir. They were right close together.

Commissioner McFadden: Wait a minute. May I get this sale, Hines to Faulkner, that was a sale in 1949, wasn't it?

The Witness: Yes, sir, in 1949.

Commissioner McFadden: What you are talking about now is something coming up in 1945?

The Witness: 1945, I will have to go through my big list.

Commissioner McFADDEN: I thought you mentioned the fact that there were some sales that you had not included in 1945?

The WITNESS: Well, what I——

Commissioner McFADDEN: Maybe I misunderstood you. [Tr. 807] The WITNESS: On this particular list here, I don't have these two sales right here that are on the map. I don't have them on this list here. They are on a large list. I didn't want to include them in this list because I didn't want to give the impression that I gave any weight to them except to show the trend. In other words, a few sales in 1945 to show that the values were lower.

Q. These sales noted on this map under the date of 1945, they were checked as to private parties as to being correct and this indicates change in the market only? A. Yes, sir, those two in 1945.

Q. They were substantially in the same locality and comparable with the 1949 sales? A. Yes, sir.

Q. Now, will you give us the prices those show for that purpose? A. 651.13 acres at $6.14 per acre.

Q. The other one? A. The other one 246 acres at $9.55 per acre.

Q. Those two sales under 1945 there, you put them in there for what they were worth on the market? A. Yes, sir.

Q. Now, the next sale from that list, shown on this map. I want you to come around this way here. A. Well, there is another that I don't have on that list. It is on the big list.

Q. Is that also for the same purpose. A. Yes, sir.

[Tr. 808] Q. Now, coming up on this map that you are illustrating your sales from; these sales that are here under 1946, at the extreme upper right hand corner of this map, that sale is likewise for the trend of market purposes? A. Yes, sir.

Q. Is it outside of the date of comparable sales, with the sales down here, comparable with the sales down here in 1949 and 1945 on the right-hand side, or the right-hand

margin of the map? (indicating on map) A. For timber production, yes, but it is located right along the railroad, and the railroad is between this tract and the paved road. In other words, it doesn't touch the paved road, but it touches the railroad.

Q. This tract up here in 1946 has the benefit of the railroad and just across the railroad from the tract is the highway and a principal South Carolina highway—is that South Carolina highway No. 28? A. Yes, sir. Number 28.

Q. What was the amount of that sale? A. That was 80 acres from T. C. Faulkner to L. T. Anderson at $10.00 per acre in 1946.

Q. Now, come to your next sale on this map, going along the upper boundary on the South Carolina map in a northern direction? A. I didn't include that on my list.

Q. What is the location of this sale here, right along the northern boundary of this map, right here, what [Tr. 809] is the location and nature of that land? (indicating on map) A. It's a growing pine land with a few spots of cultivated land on it, but primarily it was pine wood land within a quarter of a mile of this village of Modock. It is not on a paved road. It is back off the paved road. You have to go through private ownership to get back to it. It is located out away from the river along here.

Q. How far is it from the paved road? A. It is about a quarter of a mile, and it consisted of 178 acres, sold in 1948 by K. C. White to the Fairfield Woodland Products Corporation at $14.50 per acre.

Q. Now, right next to it on this map, in a northern direction along the top of the map, there is a notation "1946", of 360 acres, give us a description of that? A. That 360 acres is adjacent to the paved road, west of the paved road, and it is a tract that the government later acquired after the sale.

Q. This sale was between individuals? A. Yes, sir. It had one dwelling, and two tenant dwellings, one of which was occupied, and had about 95 acres of open land on it that was being patched farmed, and the rest of that land, the rest of that 360 acres, was in growing timbers. The

timber had been cut possibly two years prior to the sale and——

Q. — had it been cut to sawmill size or pulpwood? A. Yes sir, that sale was from T. C. Faulkner to Garey Woodland Corporation—Gair Woodland Corporation it is, on December 21, 1949—No, I have got it wrong, it was May 25, [Tr. 810] 1946, Deed Book 17, Page 69.

Q. Now, that was close to a paved road? A. Yes, sir. 360 acres at approximately $15.00 an acre. However, actually figured out on paper, the deed acreage was $14.92, but for all practical purposes I would consider it $15.00 per acre.

Q. On these two sales here, are utilities available, such as lights and telephones? A. Lights would be available, but there was not a service line out through here.

Q. Now, let's mark this one. Now, from that sale you have marked No. 2 on this map, come over to the next sale over here—Stueman Shoals—in 1945, in the northern part hereof, and I take it for granted that it is for trend of market only. A. Yes, sir. That sale was from F. M. Oakley to G. T. Moragne, January, 1945, Deed Book 16, Page 104, 1760 acres, at $8.01 per acre. This tract, I weighed it for trend only, and I put it on the map to show that it was a large tract. In other words, I wanted to show the large one.

Q. Give it the number of 3 on there. I want to locate it. Did you give the names of the parties to that? A. Yes, sir.

Q. Now that sale, you have numbered No. 3, lies right in between tracts F-500 on the South Carolina side of the river, and a tract which is not involved in this proceeding, called H-701? A. Yes, sir.

Q. To identify it, of course, with the properties [Tr. 811] in this proceedings now, none of these had taken place at the time of this? A. No, sir.

Q. Now in 1945—Can you give us any idea, or did you make any investigation as to the timber on there? A. Well, I saw it in 1946 and it was a cut-over tract of timber land at that time. There was one house on there and a few acres

of open land, but it had a good growth of timber on it, that is reproduction, but I don't think a sawmill man would have gone back in there for it at the time of the sale.

Q. The reproduction feature on here, how did it compare with the Twin City lands at the date of the taking? A. Well——

Q. Was it better or was the Twin City timber better? A. Well, the reproduction was better on this tract here marked No. 3.

Q. The reproduction was better here on this tract marked No. 3—westerly of this tract F-500 shown on this map. All right now, come to your next sale here on this map. Say, in McCormick County, this 1947 sale, give us the details on that and then I will locate it on the map. A. That was from Louise Harmon to M. G. & J. J. Dorn, Inc., Dec. 13, 1947, Deed Book 17, Page 209, 140 acres, at $25.00 per acre.

Q. Will you mark that now. That is 1947? A. Yes, sir.

Q. Will you mark that No. 4 on this map? A. Yes.

Q. I will say that No. 4 for the sake of the record [Tr. 812] lies between Little River and the Savannah River, and the figure 4 is made between the figures in the circles on this map J-908 here to the south and J-907 to the left. Now, give us a description of that tract, its location, and general physical condition? A. That was a tract that had a small area of open land on it, which had been farmed, but the tenant house had burned on the tract and was abandoned for farming. It had some merchantable timber on it. I talked to Mr. Freelin, the manager for the M. G. & J. J.——

Q. —you can tell what your general information was about it, about this tract, but I don't think it is proper to state what particular people told you.

Q. Well, I got information about it. I saw the sawmill on the tract of land, and I got information to the effect that approximately 300,000 feet of sawtimber was cut from this tract immediately after it was acquired.

Q. You have roughly indicated a 140 acres. That tract is marked out as being just in a northeasterly direction of

State Highway No. 43--about how far is that? A. About one half a mile.

Q. Is that highway paved? A. Yes, sir.

Q. Is that the highway that comes across the bridge here that is now located just above old Chamberlain Ferry, where it used to be? A. Yes sir, it is the highway that runs from McCormick to Lincolnton, across the bridge.

[Tr. 813] Q. Does this tract have access to that highway? A. Yes, sir, there is a state road that comes right through here, right along here. (indicating on map)

Q. Will you indicate that state road that comes over there, on this map here. Indicate it on this map here for us, please. Now, what is the status of that state maintained road? A. Well, it is pretty well passable, that is, on out to this point here. I have never known it to be where you couldn't get over it. In fact, I travelled that road very much in working my appraisals and I never found it impassable at any point.

Q. A secondary road, not paved, but an all weather road? A. It is graded with top soil.

Q. Did you state what that 140 acres sold for? A. $25.00 per acre.

Q. Now, come to the next tract, I will say. Take that 1949 sale that is almost due north from this sale No. 4. A. That sale was from W. W. M. Lindley to M. G. & J. J. Dorn, Inc., December 21, 1949, Deed Book 18, Page 16, 301.04 acres, $19.99 per acre.

Q. Will you put No. 5 at that sale, here on the map? Now, give us a brief description of that sale and the conditions at the time of that sale with respect to timber, improvements and locations? A. Well, that was located about three-quarters of a mile north of the State graded top-soil road. It was strictly a cut over timber site of land. The pulpwood had been cut [Tr. 814] about a year and a half prior to the sale. I would say that the merchantable timber was cut just about as close as it could be cut, but it had a good stand of small pine seedlings over two thirds of the area. The rest of it had a mixed stand of hardwood brush and pine.

Q. How did the timber on it compare with the tract, gen-

erally, on the Twin City Lands? A. The reproduction, under five inches, was better than the Twin City lands, but as I said before the merchantable timber was cut just about as close as it could be cut.

Q. The several tracts here of the Twin City lands, the several tracts of substantial quantity of timber are probably better as to merchantable timber? A. Yes, they probably have more merchantable timber.

Q. But the reproduction—— A. —the reproduction, this has a better timber growing potential.

Q. Now, the next sale, Mr. Cooley. I would suggest that you take the top sale in 1948 at the extreme top northern end of this map? A. That sale was from Elizabeth Cooley to the International Paper Company, May 4, 1948, Deed Book 17, Page 231, 274.25 acres, at $18.23 per acre.

Q. Did you get on that tract before it was sold? A. Yes, sir.

Q. What was the status of the timber on it? Well, just tell us about that tract. A. Well, in my opinion, after going over it, it [Tr. 815] would cut out 150,000 board feet of pine sawtimber. It had two units of pulpwood to the acre, I would say. The reproduction was fair to good. There were about 100 acres of that that was open land, which was reverting to pine growth.

Q. Reverting to pine, not harwood? A. Yes, sir.

Q. You said there were about 174 acres and there was about 150,000 feet of sawtimber on it? A. Yes, sawtimber that could be cut.

Q. Well, how did that compare with anything in the Twin City lands? A. It was better than the Twin City lands. It is on a paved road, about nine miles northwest of McCormick.

Q. That paved road, you mean this highway No. 28? A. Highway No. 28.

Q. It was on Highway No. 28? A. Yes, sir.

Q. Do you recall about the frontage it had on Highway No. 28? A. It was on both sides of the highway for about three quarters of a mile.

Q. A frontage on both sides of Highway No. 28 for about three quarters of a mile? A. Yes, sir.

Q. Will you put a 6 at that sale? A. Yes.

Q. Now, come down to the sale that is immediately below [Tr. 816] that sale, meaning below it on this map, just a short distance from the south bend of the north side of the area on that. A. That tract was sold by Harry Reeves to the International Paper Company, 4th of April, 1948, Deed Book 17, Page 230, 1011.05 acres, at $22.24 per acre.

Q. Now, did you get over that tract prior to the time of this sale? A. Yes, sir.

Q. Give us the details about it? A. That tract had, that tract of land had approximately 120 acres of bottom land along Little River, which was fenced and used for a pasture just prior to the sale. It had 200 acres of open land on the hill. Part of that was cultivated and part of it was included in the pasture. The tract had a modern dwelling on it. It had electricity, running water, and had two large barns, a silo, a well of water, and was within a quarter of a mile of Highway No. 28, which is paved. The sawtimber had been cut within a year prior to the sale. The reproduction growth on it was good, on the woodland. This tract was well adapted for cattle raising and had been used for cattle raising. I happen to live near by, and the owner had offered it for sale two years prior to the time it was sold. The owner was an elderly man and he was in his declining years and he was not able to operate it as a cattle farm and he decided that he had better move to town. His son lived in town, but he was not interested in operating the cattle farm. He didn't have to sell on account of financial circumstances. I don't think it could be considered a forced [Tr. 817] sale, however, there were those contingencies. There is always the possibility that he might have been a little over anxious to sell. However, he had two years in which to sell and that was the best bid he could get. He sold it to Mr. Reeves and Mr. Rhems made his commission on the sale, and Mr. Reeves sold it to the paper company. The old man sold it to Mr. Rhems and it was then sold to the Paper Company. The figures that I am giving and the date apply to the sale from Mr. Reeves to the paper company.

Q. This old gentlemen, the fact that he was offering that tract for sale, was that generally known in that community for a period before that sale? A. Yes, sir. I referred several people who had sold land to the government in the reservoir over there to Mr. Parker and I thought it was a good buy, and I think some of the people I referred to it later thought it was a good buy. Of course, the paper company was just most active in the market at that time. They were paying better prices than local sawmill men would be able and willing to pay, and apparently there was not quite the interest in cattle raising as there is today. This interest in cattle raising has grown as time goes on. In other words, the trend of the market over this period has had more to do with my valuation of property than the actual sales themselves.

Q. That was in 1948. What was the date of that, December, 1948? What month? A. It was in April, 1948.

Q. It was passed the 1947 taking—about April, 1948, on the South Carolina side of the river. The next taking on [Tr. 818] the South Carolina side was in December, 1949. Now, that sale, put a number 7, so that sale can be identified with the record. I think that gets all the sales on the South Carolina side of the river, does it not? A. Yes, sir.

Q. Starting now on the Georgia side of the river at what would be the southeastern edge of this map, or the right-hand head of the map—the lower right hand edge of the map as we face it. Tell us about this one. (indicating on map) A. That was a sale from J. M. Poland to F. M. Freelin. November 14, 1946, Deed Book 13, Page 164, 50 acres, at $10.00 per acre. That was a small tract on one of the main dirt roads.

Q. On one of the main dirt roads? A. Yes, sir.

Q. It was on this old Petersburg road? A. Yes, sir, and it had a small shack on it. The timber had been cut from it, but it had a good reproduction stand at the time.

Q. How did the timber reproduction compare with the Twin City lands? A. It was better.

Q. All right, we will number this one No. 8, which is on the Georgia side. Come up there in the northern direction,

in the year 1946, what about that one? A. That was a sale from J. H. Ashmore to R. D. Culloughs, December 21, 1946, Deed Book 13, Page 183, 500 acres, $16.00 per acre.

[Tr. 819] Q. On that particular sale, put it this way, put December before that 1946. That brings us up reasonably close to 1947, the taking on the Georgia side. Now, give us the details of that particular tract, which is a substantial amount of land, about 500 acres. A. There were three run down tenant shacks on that tract, and it had approximately 70 acres of open land, which was being patched farmed, and the rest of the 500 acres was in growing timber. There was merchantable timber on the tract at the time it was sold. It was cut immediately after it was sold, but it was cut judiciously. It wasn't cut close.

Q. You know that it had timber that could be economically cut, judiciously cut on it at the time of the sale—in other words, it had merchantable timber on it at the time of the sale and it was cut judiciously after the sale? A. Yes, sir.

Q. Did you consider that the Twin City Lands had timber that could be judiciously cut on the day of the taking to get your comparison? A. Well, from a management standpoint I would say no. It would be better to let it stay there to reseed.

Q. How do you say this timber on this tract, before it was cut and at the time it was cut after the sale, how did it compare with the best of the Twin City timber? A. It was about like the best.

Q. Is there any other details about the sale of that land? [Tr. 820] A. No, sir, I don't think so.

Q. I notice that there is a road on this map shown going through here, but that is—does that road amount to anything? A. That road goes through this tract.

Q. It is not an all weather road, is it? A. No, sir, it is a dirt road.

Q. All right, mark that sale No. 9 that we were just discussing. Did you give me the amount of that sale? A. That's number 9. (marking map)

Q. All right, the next sale. A. That sale was from Mrs.

H. H. Freeman to Roy Edmund and Wayne Goosby. That was April 11, 1945.

Q. I want the details on that. You know both of those parties, don't you? A. Yes, sir.

Q. Give me the details on that sale? A. Well, let me finish the statistics here.

Q. Oh, all right. A. Now, that deed was actually not recorded until March 19, 1947, however, for all practical purposes the sale was made in April, 1945.

Q. The deal was closed? A. Yes, sir. That is Deed Book 12, Page 283, 250.05 acres, sold for $4.50 an acre.

Q. Do you know the condition of that land? A. It is the nearest tract in all the sales that I have related, or it comes nearer being in the same physical [Tr. 821] condition as of the date of sale as the Twin City Power Company lands were on the day of taking, and that runs back to 1945.

Q. Now, that sale is located just northerly of the tract numbered here G-600, it joins tract G-600 that we are concerned with to the north here? (indicating on map) A. Yes, sir.

Q. 250.5 acres, you say? A. Yes, sir.

Q. And you are now numbering that sale No. 10? A. Yes, sir.

Q. For the purpose of the record? A. Yes, sir.

Q. Does that complete—no, here is one. Now here is a sale dated 1948, what about that one? A. That sale was from Crawford to W. D. Dunaway, January 10, 1948, Deed Book 12, Page 354, 577.75 acres, price per acre $20.00.

Q. Did you give us the total amount of acreage? A. Yes, sir.

Q. Now, tell us about that tract of land? A. Well, I gave that sale some weight. It has better location and better timber on it. It also had a dwelling and about 60 acres of open land.

Q. Now, I want you to compare these sales, not only with this property, but with the defendant's values. Give us the full details on it. By the way, the purchaser of that sale [Tr. 822] is an extremely well informed, isn't he? A.

Yes sir, I consider him the best informed man in Lincoln County. He is county clerk.

Q. Do you know the seller of that property? A. Yes, sir. I know him personally.

Q. How does he stand with reference to being an informed person? A. Well, he didn't have to sell, because I know his financial circumstances. However, he was not particularly interested in farming. He lived in town.

Q. Did he know property? A. Yes, sir.

Q. Did he know that property? A. Yes, sir.

Q. Did he know farming? A. Yes, sir.

Q. Give us the details on that sale. By the way, you said that he lived in town, was that in Lincolnton, Georgia? A. Yes, sir.

Q. All right, now give us the details on that. A. Well, that property is located about three quarters of a mile north of paved highway No. 43, about 5 miles east of Lincolnton, in Lincoln County.

Q. What access road does it have to Georgia Highway No. 43? A. It has one of the main county dirt roads, that is, it is maintained by the county. It is a top soil road.

Q. Maintained as an all weather road? [Tr. 823] A. That is a hard statement to make, because under the most adversed weather conditions it might be impassable but ordinarily it is all right.

Q. Now, what else about this property? Any improvements on this property? A. It had one dwelling suitable for the owner to live in. It had one old abandoned tenant house and some farm land. It had, at the time of the sale, merchantable timber on it. I had occasion to cruise a portion of that timber land because it was acquired by the government.

Q. What was the timber cruise on it? A. Well, I don't recall the details but to the best of my knowledge it cruised out around—that was just a portion of the tract, we didn't take all of it—but it cruised out around 1200 board feet to the acre.

Q. Part of it you took? A. Yes, sir. Now, that was growing timber however, and if it was mine I would not

have cut it, although it could be sold. There was a market for it.

Q. How did it compare with the Twin City Power timber? A. It was better.

Q. It was better than the Twin City tract? A. Yes, sir.

Q. All right, will you number that sale No. 11? A. Yes.

Q. Now, Mr. Cooley, all of these things that you have named, you took into consideration in evaluating these tracts? A. Yes, sir.

[Tr. 824] Q. In the various civil actions on both sides of the river as of these various dates? A. Yes, sir.

Q. And in evaluating these tracts—well, I will put it this way: Regardless of that, in placing valuations on them, did you take into consideration any value that might be involved in the fact that they were adjacent to other Twin City lands or parts of larger tracts? A. Yes, sir.

Q. Now, taking all of those things into consideration, the values typed on this piece of paper, represent your opinion of the value of these tracts? A. Yes, sir.

Q. This paper is typewritten. Will you check it carefully? I just don't want to have any typographical errors. That was typed in there? A. Yes, sir.

Q. Let me take that off.

Commissioner McFadden: Here's a knife.

Q. Now, Mr. Cooley, the rest of this typewritten page, have you carefully checked the page and figures and tract numbers? A. Let me run down it. It won't take more than a minute to do it. Now, on Tract G-627 the decimal point is in the wrong place. That's $12,650.00 instead of $1250.00.

Q. Now, on each of these tracts you took into consideration Mr. Hannold's timber cruise? A. Wait a minute, I am not through checking.

Q. Oh. [Tr. 825] A. This is a typographical error. This should be 12,300 instead of 13,300.

Mr. Miller: I would suggest this, that we check it over night and the Court Reporter can just write it in.

Q. Now, there is one tract here I want to ask particularly your opinion about, it is tract F-541, the five acre strip, I notice that you put that at $60.00 an acre, or $300.00 for that five acres which I believe will check out—yes it does check out at a much higher value per acre than any of your others. How did you adjust that five acres? A. I appraised the 76.16 acres based on an examination that I made of that tract as a whole—I believe it was back in 1948—and then after the declaration of taking was filed on it I reviewed it and advanced it in line with the advance in the market, and that figure of $60.00 per acre represents the average per acre valuation of the 76.16 acres. I did not appraise the 5 acres as a separate unity. I am generally familiar with the tract as a whole and know that the five acres is down at the lower elevation, but I could not say how much timber is on it, whether there is more on this five acres, or less than the average for the tract, and that's the conditions under which I placed the value on it.

Q. This never was out as a separate tract? A. No, sir.

Q. This five acres? A. No sir, it wasn't discovered until a good while after the declaration of taking.

Q. I want to make this clear; now, on this tract you [Tr. 826] want to make it clear that this tract is your honest appraisal of tract F-541 as a whole, but it was the five acres that you took an average of? You took an average of that? A. Yes, sir.

Mr. Miller: This may be considered in evidence now, and we will have Mr. Cooley to check it by in the morning and hand it to opposing counsel and have copies made, one for the Commission and the Court Reporter can make a note to copy this into his record.

Mr. Robinson: May I have a copy now?

Mr. Miller: Yes, let Mr. Robinson have one of the checked copies, this checked copy here. I want to say further that Mr. Robinson, my very very good friend, gets the best breaks I ever saw. I don't believe I ever got a sleep overnight before cross examining one of his witnesses. (laughter)

Commissioner McFadden: Suppose we take out here until in the morning. We have got in a pretty good days work today.

Note: Recessed from Thursday afternoon until 9:30 A.M. Friday Morning, April 25, 1952, at which time the proceedings were resumed as follows on the next page.

[Tr. 827] 9:30 A.M. Friday Morning, April 25, 1952

Mr. Miller: While, if your Honor please, we are waiting for Mr. Cooley to come down, I can put in a few documents. The government offers in evidence the map used by Mr. Cooley in testifying with respect to comparable sales with the sales numbered in red thereon, and some of which he numbered from 1 to 11, inclusive, as illustrative of the evidence of the witness, Cooley, in so far as it does illustrate it.

Commissioner McFadden: I believe that will be Plaintiff's Exhibit G-I.

Mr. Miller: I would like to offer in evidence now a list of tract valuations testified to by the witness, J. M. Cox, to illustrate the evidence of the witness in so far as it does illustrate it.

Commissioner McFadden: That will be Government's Exhibit G-J.

Mr. Miller: Come back to the stand, Mr. Cooley.

Mr. Spencer R. Cooley, Recalled by the Government, Testified

Direct examination continued

By Mr. Miller.

Q. Mr. Cooley, in the light of all of your previous testimony as to the various dates here, have you formed your opinion as to the fair market value of this property as a whole for its highest and best use, other than power site

value, if any, including timber and farming and all others of such, is that correct? A. Yes, sir.

[Tr. 828] Q. Now, start with Civil Action 532, declaration of taking filed June, 1947, and give us your valuation of that tract E-434 as of June, 1947? A. $15,000.00.

Q. And that tract contains 1064.47 acres? A. Yes, sir.

Q. Tract E-439 as of the same date containing 328 acres? A. $6,760.00.

Q. Now, coming to Civil Action 521 and all of the following tracts will be as of January 3, 1950, Tract E-443, 429.51 acres? A. The value is $10,200.00.

Q. And tract E-446 containing 128.03 acres? A. $2,325.00.

Q. And tract E-457, containing 24.27 acres? A. $440.00.

Q. Mr. Cooley, on these small tracts, did you or did not—on all of these small tracts, did you give them the full value they might have in connection with adjacent property whether the valuation fell on the same day or not? A. I don't believe I got your question exactly. I might not have valued the adjacent property.

Q. I mean the property of the Twin City Power Company, shown on this map, Defendant's Exhibit 25. We divided it up according to dates and valuations, I thought. Well, I will put it this way; did you prejudice these smaller tracts in any way by the fact the exhibit may show that they were isolated tracts? [Tr. 829] A. No, sir.

Q. Tract E-457 was $440.00? A. Yes, sir.

Q. Now, tract E-498, containing 3.2 acres? A. $70.00.

Q. Tract G-600, containing 247.06 acres? A. $4,600.00.

Q. Now, coming to Civil Action 537, date of taking July 13, 1950. Now, as of that date your valuations as to the following tracts: Tract E-449, containing 5.51 acres? A. $100.00.

Q. Tract G-616, containing 121.53 acres? A. $2,640.00.

Q. Tract G-627, containing 546.78 acres? A. $12,650.00.

Q. Tract G-694, containing 10 acres? A. $250.00.

Q. Now, coming to the South Carolina cases, Civil Action No. 1033, date of taking December 21, 1949. As of that date, what is your valuation for tract F-500, containing 1033 acres? A. $24,400.00.

Q. Tract H-700, containing 497 acres? A. $12,300.00.

Q. Now, coming to Civil Action No. 1073, declaration of taking filed July 5, 1950. As of that date, what was your value as to tract H-732, containing 70 acres? [Tr. 830] A. $1,295.00.

Q. Now, as of the same date, with respect to F-541, five acres owned by the Twin City Power Company; I believe you testified on direct examination that you gave that, not as an individual value but portions of a value of the whole of the acreage basis to it? A. Yes, sir.

Q. Now the apportionate value for it as a part of the 76 acre tract was $300.00? A. Yes, sir.

Q. Now, Mr. Cooley, this list of tracts, dates, acreage and valuations with also the per acre value figured out on it, which is merely a matter of calculations for the convenience of anybody that wants to check that way—that is it, isn't it, Mr. Cooley? A. Yes, sir.

Mr. MILLER: Now, I would like to offer that in evidence to illustrate the evidence of the witness, Cooley, in so far as it does illustrate it.

Commissioner MCFADDEN: It is admitted in evidence and marked Government's Exhibit "K".

Q. Now, Mr. Cooley, with respect to that 5.80 acres, which I have referred to only for identification as the Twin City railroad right-of-way, shown on this Exhibit No. 25, as running from Price's Island dam site, as marked on Exhibit 25, up to the railroad in the vicinity of Modock, are you familiar with that area in that 30 foot strip of land? A. Yes sir, but let me add something there. That [Tr. 831] 5.80 acres does not run all the way up to the intersection of the railroad at Modock. It only runs to the edge of the Clark Hill Reservoir area boundary.

Q. And that is indicated on this map? A. Yes, sir.

Q. The Clark Hill boundary is indicated in the dotted lines here, that 5.80, is it lying in the Clark Hill boundary? A. Yes, sir.

Q. As of the date of taking, were you familiar with that strip of land? A. Yes, sir.

Q. Can you give us what you consider a reasonable accu-

rate opinion of the value of land of that type in this 5.80 acres? A. As of what date?

Q. As of June 1947? A. I didn't value it as a railroad right of way, but whatever value it would have, it's highest value would be to add on to the adjacent lands and in my opinion it was worth $15.00 an acre.

Q. Now, Mr. Cooley, in the event this Commission should find that the Twin City Power Company, or its affiliate, owned 40 acres of land spread out along approximately 2,000 feet of river frontage of tract H-703 on the South Carolina side of the river, as to that separate strip of land along the river there, can you form any estimate of value as to that as of July 5, 1950? A. I have not appraised that as a separate tract. [Tr. 832] I appraised what is known as the Annie P. Robertson tract and at the time I viewed the property this land was mapped in under the ownership of Annie P. Robertson. I possibly crossed this tract at several points at the time I was appraising the Annie P. Robertson tract, but I had no knowledge at that time of any line between this tract and the Annie P. Robertson tract. Portions of the bottom lands were cut over. Other places were not cut over. I am unable to tell by viewing the map whether some of this land along Benefield Creek might run up into pine lands. My opinion, based on the foregoing premises, is that the value of this land as an———— would range between 25 and $50.00 per acre.

Q. You never made a particular appraisal of this land? A. No, sir.

Q. That Annie P. Robertson tract, you appraised it as a whole. How much was involved? A. A little over 2600 acres, I don't remember exactly.

Q. This range that you have given us, is your best judgment on the range of value on that strip? A. Yes, sir.

Mr. Miller: The witness is with you.

Cross examination

By Mr. Robinson:

Q. Mr. Cooley, have you ever done any farming of your own? A. Yes, sir.

[Tr. 833] Q. How long a period of time? A. Well, I owned two farms when I was County Agent in Mississippi. One of them I supervised the farming on directly for one year. The other one I supervised the farming on it by long distance. I had a manager out at the place.

Q. How long? A. Three years.

Q. How long ago was that? A. That was back in 1928 until 1931 or 1932.

Q. That is the extent of your farming experience? A. Well, I, of course, was raised on a farm.

Q. But in your adult life, except for this supervising a farm—— A. —that's right.

Q. You never done any farming in South Carolina? A. Well, I own a piece of property, or at least my wife do in McCormick County, South Carolina. It is very little farming.

Q. Just where you live? A. Yes, sir, mostly where I live.

Q. You have not raised any cattle out there? A. No sir, I raised some sheep.

Q. Now, this land that you are talking about here, I believe you indicated that its highest and best use, aside from power value, which we are not discussing with you, you feel has two possibly uses, one is raising timber and pulpwood and the other raising cattle? Those are the two possibilities?

[Tr. 834] Q. It is not particularly suited for row crops? A. Well, I would say included in the possibilities could be row crop farming on a limited acreage?

Q. Now, until you came here in 1945 and 1946 you had no familiarity with soil and agricultural conditions? A. No sir, not in a direct way.

Q. And your experience here has been in appraising and acquiring land for the United States' Government, has it not? A. Other than the fact that I lived on this farm.

Q. And I believe more recently you have been doing some appraising down at the H-Bomb plant? A. Yes, sir. I went over there about November, 1951, and I worked on both jobs. I did some work back on Clark Hill, as I an

doing now, but primarily, after November, my duties were over at the H-Bomb plant up until July, 1951.

Q. You have been transferred back to Clark Hill? A. I have been transferred back to Savannah. The Clark Hill real estate office was closed around the first of the year, of the first of the year, 1951.

Q. Your responsibility now, aside from testifying in cases which you appraised, your responsibility relates to the H-bomb area or the Clark Hill area? A. Well, it relates to the H-bomb area in so far as any tract of land that I might have to go back to testify in court on. That is the only extent that I have any connection with the H-bomb area. Since July, 1951, I have spent more of my time on appraising lands for military installations in South Carolina, North Carolina and Georgia. These are all [Tr. 835] small acquisitions just scattered about, and more of my time has been spent on that than on Clark Hill directly.

Q. That is under either Clark Hill or the H-bomb plant? A. That's right.

Q. And I assume that a great portion of your time has been spent in testifying in various cases involving Clark Hill and the H-bomb plant area? A. Not relatively speaking, not a great amount.

Q. How many cases have you testified in? A. Oh, I would say about 25 or 30, somewhere along there.

Q. Now, Mr. Cooley, you told us that you had discussed the value of these properties with many different people, including the landowners and the landowners attorneys and the landowners' witnesses, and that is true? A. Yes, sir.

Q. I assume that you have gotten a variety of ideas and opinions about that, have you not? A. Yes, sir; I sure have.

Q. You found some of the landowners, I guess, who think their property is worth three or four times as much as you do, haven't you? A. Well, that's going a little bit far. I don't believe any of them think that.

Q. You haven't heard anybody that raised your appraisal as much as three or four times? A. Well, excepting this case.

[Tr. 836] Q. Excepting this case? A. Yes, sir.

Q. This is the only case where you have had anybody to ...fer with you by that much? A. Well, the only thing that I base that to be is on the testimony in court, that is, anything definitely, because landowners are not prone to tell you what they think the property is worth.

Q. Well, I got the impression from your direct testimony that you had gotten some ideas from landowners? A. That's true, but I don't mean that it is preponderate. It is just occasionally that they express an opinion as to the value of the property.

Q. Now, of those people that you have discussed it with, I notice that you brought Mr. Cox in. You are responsible for bringing the other land witnesses in for the government, I assume, aren't you? A. Well, not altogether.

Q. But primarily? A. Yes.

Q. I notice on this first tract in South Carolina your appraisal was $24,400.00, and Mr. Cox's appraisal was $24,733.00, which seems to me to be only about one percent apart? Is that correct? A. From those figures, yes sir.

Q. Well, that is pretty close for a 1033 acres, isn't it? A. It is pretty close. It don't usually run that close.

[Tr. 837] Q. It don't usually run that close? A. No, sir.

Q. Did you and Mr. Cox agree on the value? A. No, sir.

Q. Did you know what he was going to testify to? A. No, sir.

Q. Now, you handed me yesterday at the close of the hearing three lists, mimeographed sheets, one of which contains a list of apparently 359 tracts entitled "Clark Hill Project Georgia-South Carolina, McCormick County, South Carolina, Comparable sales", did you not? A. Yes, sir.

Q. And the second contained a list of 56 tracts marked "McCormick Clark Hill Project Georgia-South Carolina, McCormick, South Carolina, Comparable Sales", did you not also? A. Yes, sir.

Q. Now, I think there are some duplications in these lists, are there not? A. Yes, sir.

Q. And the third one was "Clark Hill Project, Georgia-South Carolina", list containing—"Lincoln County,

Georgia Comparable sales"—list containing 62 items and attached to it another list containing 29 items? A. Yes, sir.

Q. Now, these are the information that you obtained from the records, I take it, in Lincoln County, Georgia, and McCormick, County, South Carolina, of sales? A. Yes, sir.

[Tr. 838] Q. And it covers a period, I believe, from 1945 up until or up into 1950? A. Yes, sir.

Q. Very few in 1950? A. Yes, very few in '50.

Q. Now, did you take off all of the sales in those Counties, from the records in those counties, or only some of them? A. That list there includes practically all of the sales outside of town limits. For instance, if it was a town lot—in other words, at the time I was taking the sales off, if I knew for sure that the property might be two or three acres right in the edge of town or for all practical purposes in town, I left it off.

Q. These are the sales that you considered comparable generally? A. Well, some of those I didn't consider comparable after I made the investigation. A lot of them, from information as to their location and condition that I would get from the County Clerk, or some responsible person I would never follow the lead any further. I would just drop consideration of that.

Q. Well, of this list of some, perhaps, 450, you have picked out 11 that you have thought was most comparable to the Twin City holdings? A. I wouldn't say that I picked out the 11. I would say there are other sales in there that would be just as comparable. After all, there is a limit to the number. I could have extended the list so far as that is concerned of [Tr. 839] sales which I think are pertinent as much so as the one I have on that short list.

Q. But these eleven you thought were most pertinent than the others for this particular case? A. No sir, I wouldn't say that because I just did not deem it necessary for this purpose to have a longer list than that, but I of course could have made it longer.

Q. I understand, but the choice was yours and you did

pick out the eleven to bring in here to illustrate your testimony? A. Yes, sir.

Q. What was the source of consideration that you got in these deeds? A. It was the amount that was stated in the deeds, and verified by the revenue stamp. Now, in cases where it was ten dollars or five dollars or one dollar and other valuable considerations I didn't try to apply the revenue stamp to it and make any estimate of the consideration. I left those off.

Q. I notice you have got one in here of $2.43 per acre, do you think that was the actual consideration, 328 acres Morgan White, No. 97, in McCormick County, South Carolina, in 1946? A. I would not be able to say whether that is accurate or not, but that was what was on the record. In fact, that value is so low I wouldn't even give consideration to it. Just on the face of it I would think there was something wrong.

Q. Now, I find that a good many of these in here [Tr. 840] have a much higher per acre value than you testified here? A. Yes, sir.

Q. And a much higher per acre value than any of the eleven that you have brought in here? A. Yes, I think that is true.

Q. That is correct, isn't it? A. Yes, sir.

Q. For instance in 1948, in Lincoln County, Georgia——

Mr. Miller: Objection. I realize that he is on cross examination, but incompetent and immaterial evidence can not be brought out on cross examination any more than on direct examination. Now, whether or not prices come in is in the discretion of the court. Now, if he wants this witness to bring out other sales than those I brought out on direct examination, he should find out first whether they are comparable to this property as to dates, features, locations and so forth, and——

Commissioner McFadden: As I recall, Mr. Miller, the question was asked after Mr. Cooley had testified that he made numerous inquiries to discover private sales between private individuals as to get some basis for forming his opinion as to the value of the land, and you asked him to

give you more or less a general idea as to how many of those sales he investigated and his recollection was 150 to 200. Now, he then has a list there and it seems to me that on cross examination, that is one of the basis for forming his opinion, that is admissible.

Mr. Miller: Well, you have to draw a distinction [Tr. 841] between what a witness is asked on his qualifications. Now, when a witness comes in here and, frankly, this witness is a professional appraiser and in qualifying him it is necessary to bring out his general back ground to show whether or not he obtained a long enough list to get what was explained to your Honor the other day as the market during this period. That question is not asked here with respect to the value of this property. That question was brought out on the witness' qualifications only to the extent of studying property in this area. Now, the first reason I object to it is I don't think the evidence was in chief and for the purpose of additional sales he makes this witness his witness, and in the second place, if these sales come in, when—or as each sale come in when I got down to the sales we gave in each instance a description of the data here and the witness' familiarity with the party and a description of the property so that we could show the comparable purposes. I object to these sales being brought out helter-skelter because it is bringing out incompetent evidence on part of cross examination. That is part of the grounds of the objection. Now, on the discretion of the court, he runs through a list of 250 sales here, and I might say that these sales run up and down all types of property that are merely for qualification of the witness, and therefore if he runs through them on cross examination I will have to go back and run through them again on redirect examination and there is no telling how long it will take.

Commissioner McFadden: Objection overruled.

[Tr. 842] Q. I am quite sure I asked you earlier, Mr. Cooley, but the land in the Clark Hill Reservoir, the bulk of it is rather generally of the same character, isn't it? A.

Yes sir, it is generally of the same character. The difference lies largely in the amount of timber that was on it.

Q. And these lists that you have marked as comparable sales and these lists were prepared exclusively in connection with Clark Hill Acquisition Program, were they not? A. Yes, sir.

Q. Now, I just want to briefly call your attention to a few of these sales in Lincoln County, Georgia. For instance, No. 48, W. S. Partridge to Dan Partridge in October, 1946, the price per acre you have got it $82.20. Do you recall if that is correct? A. I would have to see——

Q. —I will read this to you——

Mr. Miller: Now, may my objection run to all of this line of examination?

Commissioner McFadden: Yes, all of this cross examination is subject to Mr. Miller's objection.

Q. I am just going to call your attention to a few of these and you can check them. A. Lets make an explanation and it might clarify it some. I don't mean I am trying to avoid answering your question but I think it would be best for me to make an explanation. You see, I can't recall these tracts of land to memory just on the basis of who owned them and the price per acre. It might be that if I had the maps they were [Tr. 843] originally plotted on it would call to memory that particular tract, and even the number of acres might help me to recall it. Now, in a lot of instances there the same parties have bought tracts of land and I might connect one tract with that particular party, but it would be the wrong one because I know they have bought several tracts of similar size and it would be difficult, without me making a study in connection with the maps I have in Savannah, and therefore I could only give you general information and in most instances about where they are located.

Q. I don't want to go into details about any of these, but I want to read off a few from this list and ask if they are correct. I don't want the details, and I am not going into too many of them——

Mr. MILLER: —I object to that on the grounds that sales prices without detail comparability is incompetent and not evidence of market value, and not probative of any issue involved in this case. We object further on the ground that we are not being given the right for the court and the Commission to exercise its discretion in receiving evidence of comparable sales. We object on the ground, with all due respect, that it is an abuse of discretion, to receive these sales without that. Under the rulings of the 4th and 5th Circuits and other Circuits it is an abuse of discretion to receive in evidence sales of other properties.

Commissioner MCFADDEN: Well, in that connection we overrule the objection. This is cross examination, and it [Tr. 844] has always been my conception, as wrong as it may be, that a man has a right to cross examine a witness in any manner and fashion as he sees fit, and of course if you want to elaborate on redirect examination you have a perfect right to do so.

Mr. MILLER: Yes, your Honor, but he is bringing out new facts on cross examination, and cross examination should never be used to fill the record with incompetent, extraneous and irrelevant matters that has no relationship to the witness' qualifications and thereby bring into the record incompetent and irrelevant matters. I want to say this, that he probably could read from this list that would take three weeks or more to check and explain.

Commissioner MCFADDEN: Make a note, will you, Mr. Reporter, that all of this testimony is being received subject to Mr. Miller's objection. However, unless my memory fails me, this witness, Mr. Cooley, testified on direct examination that he had formed his opinion of land values in the Clark Hill Basin Area from an investigation of what he considered to be somewhat comparable sales from about 1945 and 1946 up until 1950, and it is our conception of the law that the right to cross examine with respect to that list, or that information that he obtained, as a basis of forming his opinion, is proper cross examination, and should be permitted.

Mr. MILLER: We renew at this time all grounds of objections heretofore made and may it all run to the line?

Commissioner MCFADDEN: Yes, sir. Go ahead, Mr. Robinson.

[Tr. 845] Q. Mr. Cooley, I am going to hand you these three lists, which you have on the top of them marked "Comparable Sales", and I want to ask you to check the accuracy of a few of them. On top is "Lincoln County, Georgia". Look at No. 48 and read that into the record for us, please. A. W. S. Partridge to Dan Partridge, 10-20-46, Deed Book 13, Page 153, 36.5 acres, $3,000.00, price per acre $82.20.

Q. Now, turn on over to No. 24, and check that. A. Haze Boler to W. A. Boler, 11-22-47, Deed Book 13, Page 264, 57.06 acres, $3,500.00, $60.76 per acre.

Q. Now, turn on over to No. 8, on your last sheet, I believe. A. Number what?

Q. No. 8. Wells to Edmund. A. J. P. Wells to Roy Edmund, 4-10-48, Deed Book 13, Page 296, 56.75 acres, $3,750.00, $66.08 per acre.

Q. Now, turn to McCormick County, South Carolina, please. No. 156. A. That the short list?

Q. No, the large one. A. Number what?

Q. Number 156. A. Jack Dempsey to R. L. Faulkner, 10-29-47, Deed Book 14, Page 289, 81 acres, $9,000.00, $111.11 per acre.

Q. Now, No. 240. A. W. W. M. Lindley to J. F. E. Jester, 9-13-48, Deed Book 14, Page 394, 82 acres, $5,000.00, price per acre [Tr. 846] $60.90.

Q. Now, 213. Read that one. A. W. M. C. Rowland to M. G. Dorn, 11-4-48, Deed Book 14, Page 421, 32.05 acres, $3,200.00, price per acre $98.46.

Q. Now, 323, Adair to Smith. A. Ethel S. Adair and others to R. N Smith and others, on 2-10-48, Deed Book 17, Page 213, 474 acres, $47,320.00, price per acre $99.83.

Q. And on that supplemental list, No. 15, Faulkner to Faulkner? A. Annie L. Faulkner and others to T. C. Faulkner, on 4-5-49, 407 acres, $21,500.00, price per acre $52.80.

Q. Now, Mr. Cooley, what I have done is gone through and asked you to read some of the higher values, have I not? A. Yes, sir.

Q. Now, after going over that list, I believe you selected eleven, which you detailed for us on yesterday, and marked on Exhibit I on the map, didn't you? A. Yes, sir.

Q. Now, of those eleven, I believe seven were in South Carolina and four in Georgia, were they not? A. That's true.

Q. Now, of the South Carolina tracts, you only had 2 in 1948, 2 in 1949 and none in 1950? A. Yes, sir.

Q. And none in 1951? A. Yes, sir.

[Tr. 847] Q. And the taking in South Carolina, the first taking was at the end of 1949, and later about the middle of 1950? A. Yes, sir. Were you talking about South Carolina?

Q. South Carolina. A. Yes, sir.

Q. Now, of the South Carolina you treated one sale in 1945 and one sale in 1946 and on this sheet you handed to us—(off the record discussion)—Now, Mr. Cooley, of your seven South Carolina projects, two of them, Oakley to Moragne, I guess you call it, of January, 1945, and the Faulkner to Gair Wood-Maylands, May, 1946, you have used for trend only? A. Yes, sir, I did not make a tract comparison there—of course I made comparison—but I didn't consider them.

Q. Now, I am not sure that I quite understand about this use of the trend. Now, if we had a subsequent sale of the same piece of property that would be the most accurate way to work out the trend, would it not? A. Well—yes.

Q. If you had two sales of the same piece of property at different dates and no improvements had been put on it, that would be the most accurate way to tell trend, would it not? A. Well, I think you would have to have more than one project.

Q. Well, now, in order to show a trend you have got to have more than one? [Tr. 848] A. Yes, sir.

Q. Now, what other property on the South Carolina list have you to show a trend along with the Oakley and Faulk-

ner sale? A. Well, in this particular instance I didn't use any other. I just drew from my knowledge of the trend in general based on my knowledge of all the sales.

Q. Well, taking these lists together then, there is nothing on this list which we can trend 1945? A. It wasn't trend. I wasn't basing a trend on that list. I was basing trend on a more exhaustive list. Those are merely samples to show that property was lower in 1945 and was higher in 1949 and 1950.

Q. And from this list you can't tell how much higher, can you? A. No sir. I wouldn't say from that list.

Q. Now, this list, this Oakley property, which sold in January, 1949, according to this list, of $8.01, per acre; now to get any trend you would have to know what that property was worth in 1947 and 1950, which ever date you taken and compared it with? A. Trend as to that property only, it would not apply to the general trend, no sir.

Q. Well, to these two parcels then, you put in for trend—give us any value here then if they are not to be compared with anything that you have testified to. A. Well, I couldn't say as to what value it would be of use.

Q. Well, if this is all the information you had [Tr. 849] would it give value to anybody, no matter how well versed in real estate? A. It would have some very smathering indication to me. Primarily, it would be a lead, and I would look and say "Well, now, if I had more sales to here to verify this, it is a lead"—I would say, I am—if that is all I had, I am just putting myself in position of not knowing about any other sales, and if I saw that, I would say, "Well, it looks like property was selling lower in 1945 than it was in later years." Now, I would want to get a lot more sales to see if that was true. As I say, it would only be an indication.

Q. Now, lets go back and see. You said the trend was upward from the first date here of January, 1945? A. Yes, sir.

Q. Is it still upward? A. Up to the present time, I would say yes.

Q. Did you work out a percentage trend for the value in this area? A. No, sir.

Q. You can't tell us then what the percentage—— A. —well, I worked out various percentages. You can take various groups of sales and work out percentages but I did enough working with the sales to know that the reasonable trend was upward.

Q. In other words, your study of trend, convinced you that there was an upward trend? A. Absolutely.

[Tr. 850] Q. But you haven't been able to reduce that to a percentage? A. Well, I wouldn't reduce it to a percentage on any particular instance. I don't think it is possible to reduce it to a percentage. It would be just purely statistical.

Q. Now, all of these projects in South Carolina, how many are in the Clark Hill Reservoir Area? A. Seven projects?

Q. Seven comparable sales, I mean, that you have given us are in the Clark Hill Reservoir? A. I will have to look at the map and see.

Q. Just tell us which ones are in there? A. Sale No. 2.

Q. Sale No. 2, that is Faulkner to Gair Wood, in the reservoir area? A. Yes, sir, No. 2.

Q. Okaley to Moragne? A. No. four (4).

Q. How about No. 5, Mr. Harmon? A. Only a portion of No. 5.

Q. Portions of the Lindley one? A. Portion of No. 7.

Q. Portion of No. 7? A. Yes, sir.

Q. What about No. 1? A. No. 1 is not in there. It is below the dam.

Q. So, of those seven, four and part of a fifth one were in the reservoir area? A. Yes, sir.

[Tr. 851] Q. In the Reservoir area? A. Yes, sir.

Q. Now, at the time these sales were made, that you have listed here on this list, had there been an announcement of the Clark Hill Development. Was it generally known that the Clark Hill development would be built at the time of the sales you have listed here in South Carolina? The Clark Hill Project was authorized by Congress in 1944, wasn't it, Mr. Cooley? A. Yes, sir, but there was quite a bit of quiv-

ering between that time and the time the project was actually started, and even after it started there was some doubt in the minds of local people, based on propaganda in the papers, as to whether the government was going to build the dam or the Savannah River Electric Company.

Q. It was pretty well clear that one of them were going to build it, wasn't it? A. Yes, I think so.

Q. So everyone of these sales in the valley were made after it was generally known that that property would be taken either by the government, acquired either by the government or the Savannah River Electric Company for reservoir purposes? A. Well, I don't know, not all the sales that would be acquired or would be required. I don't think at that early stage no one knew to what extent any of their property would be acquired—or be required rather, unless possibly it was the Twin City Power Company. The tracts that ran down to the river, they probably might have thought it would be required, but the sales below the dam I don't think that would have been [Tr. 852] in a person's mind because it is too far below the dam, and that was made in 1949.

Q. I mean the ones in the reservoir area, four and part of another. Had not Congress, in approving the Flood Control Act, established the size of the reservoir and the height of the dam?

Mr. MILLER: This witness doesn't even have to know about that.

Mr. ROBINSON: He is charged with the knowledge of the laws of Congress.

Mr. MILLER: All except lawyers.

Commissioner McFADDEN: All right, go ahead.

Q. What I am pointing out, Mr. Cooley, and I want to be perfectly frank with you because I think it bears on this: four of these seven tracts and part of the fifth one have ultimately come into the ownership of the United States of America as a part of this reservoir area, have they not? A. Yes, sir.

Q. And at the time these sales, which you have treated as comparable sales, there had been public announcement of

the development of the project which as resulted in the government acquiring this? A. Yes, sir.

Q. All right. Now, let's turn a minute to the four in Georgia, and will you tell us which of those are in the Clark Hill Reservoir? A. Part of No. 9.

Q. Part of Ashmore, No. 9. A. Yes sir, and all of 10. [Tr. 853] Q. That's Freeman? A. Yes. And part of No. 11.

Q. Part of 11? A. Yes, sir.

Q. So, on the Georgia side there were one of the four tracts and part of two of the others that are now owned by the United States as a part of the Clark Hill Reservoir? A. Yes, sir.

Q. And these 11 are the ones you picked up from the list testified today about comparable sales? A. Yes, sir.

Q. Now, with regard to one or two of these, for instances No. 7, in the South Carolina area, the Reeves tract, you told us yesterday that tract was owned by an elderly man who felt that because of his age or condition of health he wasn't in position to raise cattle and wanted to move to town? That's correct, isn't it? A. Yes, sir.

Q. And that man, Parker, sold to Rhems, did he not, for $15,800.00, and he turned around and sold it to the International Paper Company for $22,000.00 almost simultaneous? A. Yes, sir.

Q. In other words, Mr. Reeves made about forty percent profit? A. I haven't figured it out.

Q. But it was a very large profit, wasn't it? A. Yes, sir.

Q. So that piece of property shot up just like that over night, didn't it? [Tr. 854] A. I didn't consider the first. I just considered the last one.

Q. You just considered the last one? A. Yes, sir.

Q. But that property, if you trend it, that trend would go sky high, wouldn't it? Forty percent in thirty days? A. Well, that's the reason I said you couldn't use one piece of property to establish trend, because the question of buying one day and selling another would not make a trend out of that.

Q. And those two transactions show, do they not, Mr.

Cooley, that Mr. Parker, when it came to trading, was not equal to these people who got the property. A. I don't know whether you would say he was equal or not.

Q. He was either too anxious to sell or was not as well advised or informed as the purchaser was, was he? A. Well, he was as well informed, I think, as to the value of that property, or the possibilities of it, and the demand on the market for that property as a cattle farm as anybody. Really, I think he was better informed than they were, but on the other hand, they being timber people, were better informed as to the value of that property for timber purposes than he was.

Q. And they took him for about $7,000.00, didn't they? A. Well, I don't know. Mr. Parker came over to me bragging about what he got for his land. I don't know whether you call that taking it or not. It is a matter of opinion, I think.

[Tr. 855] Q. Your view then is that Mr. Parker, the seller in that case, was equal of the buyer in the purchase so that that sale can be used as comparable between a willing buyer and a willing seller? A. Yes, sir. I think he was a well informed man, and I don't see any reason why he would want to give his property away, or to sell it for less than it was worth.

Q. I think he had a perfectly right to give it away. My point is, knowing those circumstances, you should bring it in here as comparable sales? A. I didn't bring it in. I brought in the last transaction, not the first one.

Q. But you mentioned the first one, didn't you? A. I mentioned the first one, but it didn't have any bearing on the second transaction. It is just a matter of history, of the farm.

Q. Now, on the Georgia side, this Number 11, Crawford to Dunaway, you told us in that case of Crawford to Dunaway, in January, 1948, that you consider the purchaser there in that case a very shrewd operator, that he was a county official and knew land values pretty well? A. Yes, he is very well informed.

Q. And the seller was a man who was anxious to get

rid of the property? A. No, I didn't say he was anxious to get rid of the property.

Q. Didn't you say that he wanted to quit farming? A. No sir, I said he had no particular interest in farming. [Tr. 856] Q. No particular interest in farming? A. No sir, he lived in town.

Q. Well, under those conditions the buyer usually gets a pretty good bargain? A. Well, the thing about it is that's what makes the market. You can't get around it. You have to face facts. That is what makes the market locally, the trades between people.

Q. In arriving at just compensation, which the Constitution guarantees my client in this case, don't you think, if you are going to use comparable sales, you ought to use sales where the seller gets as good a break as the buyer? A. I don't think you would ever have very many sales if you depended on your judgment to say very definitely that there was perfect equilibrium between the buyer and seller.

Q. Now, this No. 10 you brought in here, H. H. Freeman, Roy Edmund and Wayne Goosby, are you sure—I believe you said you knew these parties and talked to them about it? A. Yes, sir.

Q. Are you sure you know the facts about that transaction? A. I know some of the facts about it, but as I said I didn't put any weight on that sale other than to show that it was a low sale in that early year.

Q. Well, didn't Mrs. Freeman sell to Edmund-Goosby 250 acres of land? A. That is what the record shows. [Tr. 857] Q. Wasn't that a 25 or 28 acre tract? A. No, sir; not by any stretch of my imagination.

Q. Well, didn't Edmund and Goosby get a part of that from Ashmore? A. No, sir.

Q. And didn't Ashmore foreclose the bulk of that property under a mortgage given him by Eugene Moss? A. I don't know about that.

Q. You told us that you looked into it, didn't you? A. I didn't discover that. I don't know when the market was, or whether it had any connection with this sale, I do not know.

Q. Now, I want to be perfectly fair——

Mr. MILLER: Objection. He could bring it into court and ask this witness what he knows, but if Mr. Robinson wants to testify, I will be delighted to have him do so.

Mr. ROBINSON: I just wanted to be fair with the witness because I don't think he had the right information. I just wanted to give him what I had, and if he doesn't know, all right.

Commissioner MCFADDEN: You want to lay your foundation for contradiction?

Mr. ROBINSON: Yes.

Commissioner MCFADDEN: All right.

Q. Now, Mr. Cooley, can you swear of your own knowledge that Mrs. H. H. Freeman sold to Roy Edmund and Wayne Goosby this 250 acres that you have got listed here? A. That is what the record shows.

Q. Did you check the records personally? [Tr. 858] A. Yes, sir. Q. You didn't find any deed for a part of that property from a man by the name of Ashmore? A. No, sir.

Q. Will you look at your list and make sure that it is not on there? I haven't checked it. I am not sure. A. Ashmore to——

Q. —This is 4-11-45, recorded March, 1947, Deed Book 12, page 283. (Witness looking up record) May I ask you this, Mr. Cooley, do you have a method of checking? I want to give you the information that I have got and just ask you to check. You don't find any record of it? A. Well, if it was not the same acreage I would not be able to tell.

Q. 228 acre tract from Ashmore to Edmund? A. What is the number? Do you know the number?

Q. No. I didn't find it on there. A. Mr. Edmund told me that they bought the tract of land, and $4.50 an acre is what they paid for it. I verified it to that extent, and Mr. Edmund said it didn't have any timber on it, and that is the reason they got it so cheap.

Q. Did you verify whether or not it was a forced sale? That is what I am driving at? A. I did not.

Q. You did not verify whether it was a forced sale or not? A. No, sir, I did not.

[Tr. 859] Q. Now, that's my point. Now, I would like for you to verify this. I want to give you my information. My information is——

Mr. MILLER: Objection—That's the proper way——

Mr. ROBINSON: Now, I have got a right to ask these questions on cross examination without being instructed by the government's counsel.

Mr. MILLER: I don't object to him dictating the information into the record, but I just think this is not proper cross examination.

Commissioner MCFADDEN: Subject to Mr. Miller's objection, go ahead and ask the question, Mr. Robinson, subject to Mr. Miller's objection.

Q. Now, I want to ask you if you checked to see whether 228 acres of this tract of 250 acres that you have listed as No. 10 on the map, was not obtained by Mr. Edmund as a result of a sale under what I believe they call in Georgia a mortgage lien given by Eugene Moss to Ashmore, did you check to see whether or not that was correct? A. No, sir.

Q. Are you in position to make that check for us? A. Well, not here, no sir.

Q. Could you do it before we recess this afternoon? A. I don't think so.

Mr. ROBINSON: I might say that Mr. Edmund promised to come today but he has not come yet.

Q. I notice that these South Carolina properties were all taken after December 21, 1949 and the summer of 1950? A. Yes, sir.

[Tr. 860] Q. Now, of these seven sales in South Carolina, only one is in 1949 and none in 1950, is that correct? A. Yes, sir.

Q. Mr. Cooley, the fact is there have been no land for sale in McCormick County as a practical proposition of this character during the year 1950? A. Well, I think I stated

in my testimony on yesterday that the government having acquired most of the land by that time that there was very little, very few transactions in this vicinity because the government had acquired all the land. Now, there were some transactions in other parts of the County but they were not in any great volume. In other words, there were not nearly as many sales made after 1949 as there had been. I mean on an annual basis.

Q. In other words, the demand has increased percentage-wise with reference to supply? A. Yes, sir.

Q. And it was mighty hard to buy any land in McCormick County at all in 1950? A. Well, if you wanted to pay the price for it, yes sir.

Q. If you wanted to pay the price for it? A. Yes, sir.

Q. What price? A. Well, of course, we would have to get down to some specific tract.

Q. By that you mean a great deal higher price than you placed on these tracts? A. Well, the land that was taken off the market and [Tr. 861] bought by the government was more remote land, and the prices that would be paid for the other lands in the county would be higher in proportion than the lands in this area.

Q. A great deal higher than the appraisal you put on this property? A. As a general statement, yes.

Q. And that statement applies to the date of taking in this case, don't it? A. Yes, it does.

Q. Would you make the same statement about the lands in Lincoln County, Georgia? A. The lands that were bought and sold at that time were not comparable to the lands being taken by the government.

Q. Now, in your comparable sales in Georgia, you have not listed any sales after January, 1948, have you? A. I think that is correct.

Q. And I believe 8 or 10 tracts in Georgia were taken in January, 1950, and in July, 1950, that is correct, isn't it? A. Yes, sir.

Q. That's correct? A. Yes, sir.

Q. So, of your comparable sales in Georgia, you haven't got a sale within approximately closer than two years to the date of the taking of the eight tracts? A. No, sir.

Q. Now, as of January 3, 1950, were there any [Tr. 862] comparable lands for sale in Lincoln County, Georgia? A. When?

Q. As of January 3, 1950. A. For sale?

Q. Yes. A. Were there any comparable lands for sale?

Q. Yes. Were there any comparable lands for sale in Lincoln County, Georgia, as of January 3, 1950? A. I don't know of any.

Q. Would you say the same as of July, 1950? A. Yes, sir.

Q. Would you say that as of January 3, 1950, the demand for land in Lincoln County, Georgia, had gained percentage wise on the supply? A. Yes, sir.

Q. And would you say there were further gains in July, 1950? A. Yes, sir.

Q. And in order to buy lands in Lincoln County, Georgia, in January, 1950, you would have had to pay a premium for the land, wouldn't you? A. I don't know what you mean by premium. You would have to pay more than you would have had at some previous time.

Q. Well, it was what we call a seller's market, wasn't it? A. I believe you could say that, yes sir.

Q. And in a seller's market the prices are higher [Tr. 863] when it is the buyer's market? A. Yes, sir. That is what makes it.

Q. And in this period between 1945 and 1950 the lands in this area had changed from a buyer's market to a seller's market, hadn't it? A. I believe that could be stated, yes sir.

Mr. Robinson: I think that's all.

Redirect examination

By Mr. Miller:

Q. In arriving at your values that you have testified to here in court, Mr. Cooley, have you taken all of these considerations that Mr. Robinson brought out in fixing the

value of the property as of the various dates? A. Yes, I think I did.

Q. Now, that list of sales that Mr. Robinson said something about, that is a general list covering all of the sales—or covering all of the acreages in Lincoln County and McCormick County that you took down? A. It is a general list for those dates, yes sir.

Q. And that was for market checking against the particular property where you found that it was applicable? A. Yes, sir.

Q. Was that list begun, when you testified on your qualifications, when you came up here from Louisiana? Did you begin to look into the market at that time? A. Yes sir, it was begun, and several different lists were made, and it was combined and there have been a [Tr. 864] number of lists made?

Q. And that means comparable sales on that was merely the name you put to that list? A. Yes, sir.

Q. And whether it was comparable or not depended upon the various types of property you would or did discuss among those? A. Yes, sir. It is possible that it was comparable to some lands in the reservoir.

Q. And it was for the purpose of getting a feel of the market? A. Yes, sir.

Q. State whether or not it would be possible in a reasonable length of time to attempt to give others the feel of the market by accumulation over a five year period? A. I don't think so.

Q. Now, coming down to these sales that he asked you about, No. 48 and No. 24 and No. 8 in Lincoln County, Georia? A. Wait a minute, let me get those numbers.

Q. Well, 48, 24 and 8? But before looking at those, did any of those ring a bell, or do you have a reliable recollection of the property of any of those sales in Lincoln County, Georgia? A. Yes, sir, I do

Q. Take Number 48. A. Lincoln County, Georgia?

Q. Yes, Lincoln County, No. 48? [Tr. 865] A. Let's see.

Q. Do you recall anything about that transaction? A. That is Partridge to Dan Partridge?

Q. Yes, No. 48. That was 82 acres. First, I want to know this; on that particular sale do you have any reason in this case to refresh your recollection about that sale? A. No, sir; I did not, not for this one.

Q. Have you ever had any with reference to that sale? A. Yes, we—the reservoir area came up near this property and I did consider that sale in connection with others.

Q. How long ago was that? A. Back in 1947.

Q. Do you recall the type of property that No. 48 was at $82.00 an acre? A. Well, it was on a paved road there, and that is about all I remember about it.

Q. Do you remember whether it was improved or not? A. No, sir; I don't recall for certain whether it was improved or not.

Q. Do you recall the type of timber? A. No, sir.

Q. Do you recall anything about the sale of No. 24? A. Sale number what?

Q. Sale No. 24. A. No, sir, I do not.

Q. You have no recollection about that? A. No, sir.

Q. Generally, from your five years experience, when you looked at a sale in McCormick or Lincoln Counties, did you [Tr. 866] check that type of property from your experience? In other words, did you recheck that property? A. Well, I as I said I did recheck some of my appraisals.

Q. Well, I think we have been over that sufficiently. I don't care to pursue that any further. However, just as a matter of information, how much sawtimber, fully grown, can there be on an acre? A. How much can there be?

Q. Yes, the maximum stand in this country? Just give us an idea. A. Well, let me give it to you on the reservoir area?

Q. All right. A. I cruised one small area of the property that belonged to the John Daley High School in McCormick County that had 35,000 board feet of pine sawtimber to the acre, original growth. It would actually run higher than that. It could run higher in that section if left alone long enough.

Q. Now, these McCormick County sales that he read off to you, read a list of names, do you recall whether any of

them rang the bell? A. Yes, sir. You mean in McCormick County?

Q. Yes? In McCormick County, and the numbers on those were 156. A. Yes sir, that tract of land was located just below Clark Hill, just down south of the dam site, on the paved road, Highway No. 28. It had—well, the railroad run through it also.

Q. That was in South Carolina? [Tr. 867] A. Yes, in South Carolina. There were four houses that I recall that were rented. In other words, there were people living in them—some probably working at the dam. The main dwelling on that tract of land was a dwelling that possibly would be valued at not less than $5,000.00.

Q. How many acres were in that tract from that list you have there? A. 81 acres.

Q. With houses on it? A. Yes, sir.

Q. Any of these others you read off ring a bell? A. Yes, sir. If you will call them off, I will tell you.

Q. Take 200 there. A. O'kay.

Q. I just want some example. If you don't have it clear, or a clear recollection about it, I will give you the next page. A. You say page 200. You mean one of the numbers?

Q. Number 200. A. I didn't mark those as I went along.

Q. Sale No. 200. A. No sir, that Number 200, don't, no sir.

Q. Turn to sale Number 213 in McCormick County? A. Yes sir. That——

Q. 213, Give the names. A. That wasn't 213, was it. No, that one does not.

Q. That one does not? A. No sir, I don't recall the location of the property.

[Tr. 868] Q. No. 323, Adair to Smith? A. 323?

Q. Yes. A. Yes sir, I visited that property shortly after the sale. It was a large acreage, and I made a special effort to check it because one thing the price made me want to see it on that large acreage. That tract of land had a great volume of timber on it, merchantable timber on it, that had been growing for a number of years. In fact, I didn't see on the tract of land when I went in there, I didn't

see the un-cut portion, any old stump, that is, sufficiently recent to be able to tell whether it was evenly cut or not. That was bought primarily for the merchantable timber on it, and the man started cutting the timber immediately after he acquired title to it, Mr. Smith, and I was in there at the time he was cutting it. He cut over that sawtimber. He didn't cut it closely. In other words, he left it in good shape so that it would be salable and attractive for growing timber. He cut the larger timber out down to about 12 inches in diameter at the stump—well I mean 10 inches diameter breast high, and he offered that tract of land then for $30.00 an acre after he cruised the timber on it, and the last time I heard from it he still had not sold it, but I thought that the tract——

Q. —I don't want to get into offers and I will consent for that to be struck. No, Mr. Cooley——

Mr. ROBINSON: Then I move to strike it.

Mr. MILLER: Well that is not responsive—well, I mean the answer was not responsive to the question and I knew it myself.

[Tr. 869] Commissioner MCFADDEN: Well, let that be stricken from the record.

Q. Now, Mr. Cooley, this sale was at $99.00 per acre, wasn't it? A. Yes, sir, it was.

Q. Did you check what portion of this land that sold at $99.00 per acre—well, what I want is this; can you give us an estimate of the amount of timber cut off that tract, and the general condition of the land, or improvements. A. Well, the tract of land had a main dwelling on it and considerable acreage of open land to go along with it, in addition to the timber. I couldn't give you an estimate of the amount of timber cut off, I don't believe.

Q. Well, I don't think that's necessary. Was it comparable to the Twin City lands? A. No, sir. After the timber was cut, if it had been sold then, it might have been comparable.

Q. You say this man cut down the timber to what inch? A. He cut down to about 12 inch stumps.

Q. Now, turn to No. 15. A. Number 15, did you say?

Q. Yes. Faulkner. A. All right.

Q. Number 15, McCormick County, did that ring any bell? A. Yes, I attended the sale. That was sold at public [Tr. 870] outcry. I attended the sale of that land. That tract of land had been in this estate for a good many years and the timber had not been recently cut on it, and the price that was paid was primarily based on the amount of timber, and I happened to look over that tract before it was cut. In fact, when I saw it advertised I went out and looked at it to see what type of property it was, and I did that with a view that if it was sold I would know the condition of the property at the time it was sold, and I looked at it enough that I would venture to make a guess, a rough guess, of the amount of timber that was on it.

Q. How much? A. 750,000 feet of pine sawtimber.

Q. How much would that be per acre? Could you make an estimate on that? A. Well, I would have to figure it up.

Q. Well, you said there was 750,000 feet of pine sawtimber. Was there anything on that tract besides the timber? A. Well, of course, there was a good stand of pulpwood. There was an old colonial dwelling there that had some value and about a half a mile off the paved road and it had electricity out there.

Q. What about the paved road? A. Highway No. 28.

Q. South Carolina Highway No. 28? A. Yes, sir.

Q. How about the access road, was it an all weather road? [Tr. 871] A. Well, up to this place, except under very adverse conditions, I think it would be all right.

Q. Now, I believe you said, Mr. Cooley, that these sales that you listed were for the purpose of getting the feel of the trend of the market? A. Yes, sir.

Mr. Miller: All right, that's all.

Recross examination

By Mr. Robinson:

Q. I didn't bring out clearly about this timber and pulpwood on the Twin City properties. Mr. Cooley, as I under-

stand it, Mr. Hannold, in estimating the value of these various kinds of timber and pulpwood there, he didn't mean to imply that except for the fact it was being cleared for a reservoir it was appropriate to cut that timber. As a timber man you would not cut the greater portion of the timber that Mr. Hannold testified that should have been on the Twin City properties for seed purposes? A. Absolutely, no sir.

Q. And the only reason he worked these down to these low stumpage was that it had to be cleared for a reservoir? A. No, sir; that wasn't the reason. You see, we had every tract cruised regardless, because we couldn't just make a blank statement by going out and looking at it that it had no timber on it. We had to have a cruise.

[Tr. 872] Q. But normally an owner of a piece of property who is going to keep it and not have it taken for reservoir purposes would have left the bulk of that timber to continue to grow for a long period? A. I don't think there is any question about that.

Mr. Robinson: Now, that is all I have for this witness. Now, Mr. Commissioner, I am not sure about this witness' testimony whether it is subject to strike or not. I want to make a motion and I want to be perfectly frank with the Commission. He has based his testimony in large part upon eleven comparable sales. Of those eleven sales, eight of them, as I gather it, are in whole or in part in the Clark Hill Reservoir, and all eight of these sales, while between private parties, and the government is not a party to them, were made after it was known that the Government, or the Savannah River Electric Company would build Clark Hill. Now, it seems to me, therefore, those sales are in the same legal category as sales to the government, because the people of those sales—the purchasers of those sales would know that their ownership would be for a very limited time and he would purchase primarily for speculative purposes. He couldn't hold it but for two or three years until the government would acquire it by sale or condemnation, and therefore the purchaser would only be in the market for bargain property. He was either buying for a quick turn

over or speculation or buying a law suit, one of the two. Now, with those eight out of this eleven and one additional one, number 8 on the Georgia side, J. M. Horne, used only for trend, it leaves no tracts on the Georgia side and only two on the [Tr. 873] South Carolina side of these eleven which might be considered in the category of comparable sales. I don't believe that is a sufficient sample to justify the witness giving an opinion that has probative value. Now, aside from comparable sales, never having done any agricultural work or never have had any agricultural experience in South Carolina, doesn't have other qualifications which would supply the deficiency which might result from the elimination of these tracts. Now, as I say, I am not sure whether that objection goes to the relevancy—not the relevancy—but to the admissibility of the evidence or whether it goes to the weight. Now, I want to be perfectly frank with the court, because it might be interpreted either way, but it seems to me that when comparable sales are in the reservoir, substantially as these were, they have little, if any, probative value to the court, and I feel, in order to protect my client, that I should move the court and do move the court to strike it.

Mr. MILLER: I rely upon the record proper and do not care to be heard as to the basis or competency of this witness.

Commissioner MCFADDEN: Well, I think the objection there goes to the weight rather than to the admissibility. Note the objection in the record, Mr. Watson, and subject to that objection the testimony is admitted.

Mr. MILLER: May it please the Court, at this time I would like to give this list of sales, I would like to have the witness to put the same number of these that are on the map and then introduce it in evidence as Exhibit I-1.

Commissioner MCFADDEN: All right.

[Tr. 874] Mr. MILLER: At this time I would like to offer in evidence a paper in two sheets. The first sheet headed "Sales—McCormick County, South Carolina, Twin City Power Company Comparison." The second sheet of which is headed "Sales—Lincoln County, Georgia, Twin City

Company Comparison", which list contains the same sales numbered on the Exhibit I, which is this sales map to this witness' evidence, and which sales are numbered in red pencil in accordance with the same number on the map, and I would like to have it introduced in connection with the map as Exhibit "I" to illustrate this witness' evidence, in so far as it does illustrate it.

Commissioner McFadden: The map having been marked Exhibit "I", let this list be marked Exhibit "I-1".

Mr. Miller: Now, if your Honor please, I would like at this time to withdraw my motion to strike the list of sales read or brought out in the evidence on cross examination in accordance with certain numbers, the details of which are given, as in the light of the direct examination which the witness——

The Reporter: What?

Mr. Miller: —In the light of the information as to certain of these sales which the witness was able to recall and give on redirect examination. Those particular sales are competent and are competent for one purpose only, and the motion to strike is withdrawn for one purpose only, that is, these sales are now competent in the light of the evidence of this witness has given as rebuttal evidence to the values testified to by the defendant's witnesses, and I would like for the Court to keep these sales in mind as I will direct my [Tr. 875] renewal of my motion to strike to these sales and other matters on renewal of my motion to strike at the close of all the evidence. Now, I am through with this witness.

Commissioner McFadden: All right, now I believe Mr Barrett has some questions.

Commissioner Barrett: Mr. Cooley, I have just one question: In trying to get the feel of the trend of the market on which you based your appraisals on these different tracts, did you follow the history of any certain tracts or transactions, for instance, sales of tracts made in 1945 and the price that same tract brought in subsequent years?

The Witness: I do know that—in fact on this list there are some re-sales possibly—I know that on the list, some of

the list, there were re-sales of the property at subsequent dates. Yes, I did notice that, surely.

Commissioner McFADDEN: We have no further questions for Mr. Cooley.

Mr. MILLER: All right, call in Mr. Bell, Mr. H. H. Bell.

[Tr. 876] Mr. H. H. BELL, Sworn For The Government, Testified.

DIRECT EXAMINATION.

By Mr. MILLER:

Q. Mr. Bell, I believe your initials are H. H. Bell? A. Yes, sir.

Q. Where do you live, Mr. Bell? A. Augusta, Georgia.

Q. What is your business? A. Real estate.

Q. How long have you lived in Augusta, Georgia? A. I have been in Augusta since 1900.

Q. Prior to that, where were you? A. Harlem, about 25 miles west of here in Columbia County.

Q. Have you lived in any other place? A. No, sir.

Q. How long have you been in the real estate business? A. Since 1908.

Q. During your real estate experience have you handled all types of real estate? A. Yes, sir.

Q. Have you taken any particular interest in country acreage? A. I have sold quite a lot of it.

Q. Mr. Bell, I am going to ask you about Exhibit No. 25. I think it would be well for you to have this map placed before you. Here is Price's Island and this is the flow of the river? A. Yes, sir.

[Tr. 877] Q. Here is that old Modock railroad. Here is Modock on this side. (explaining map to witness) Is this a convenient way to have that map? A. Yes, sir.

Q. How long have you been familiar with the general vicinity of this map? A. That general area up and down the river?

Q. Down the river and up the river and the area included. A. Well, quite a long time. I have canoed from Calhoun Falls down to Lake Arministice a number of times.

Q. That would be way up the river above this property down to Augusta? A. Yes, sir.

Q. Mr. Bell, I would like to get some of the economical history and background of this property from you here. Do you recall about the date that this present railroad was built, the old C. W. & C. Railroad, that is marked here on the South Carolina side of this boundary of this map running through Modock? A. No, sir that goes back beyond my memory.

Q. That goes back beyond your memory? A. Yes, sir.

Q. Now, do you recall about the date that the boll weevil came into this country? A. They began coming in here about 1917.

Q. Was there any change in the economical characteristics of this country after the boll weevil came in? A. Yes, sir; it was gradual up until about 1920.

[Tr. 878] Q. Prior to the boll weevil, what was the character of this property along the old Petersburg Road here on the South Carolina side and in that vicinity as to residential area and type of property? A. The old Petersburg Road, would be the old Kilchrest road you are referring to.

Q. Well, from this road here on across here to Modock? (Indicating on map.) A. Well, a part of that was used for agricultural or cotton mostly.

Q. Back prior to what date? A. Well, up until the time the boll weevil came in and made it unprofitable to grow cotton in that section.

Q. I think you were telling me on yesterday, in pointing out areas where some of the best substantial citizens around here lived—now, could you point that area out on this map? A. Well, the Bussey family. There were quite a number of Busseys that lived up in there after they came to Augusta. Then there were the Ramseys, Hardens, in fact there are a lot of people that came to Augusta from up in that general vicinity.

Q. Would you point out that general section along this Exhibit No. 25? A. That was up and down the old Petersburg Road.

Q. Up and down this road? [Tr. 879] A. Yes, sir.

Q. Right along the old Petersburg Road? A. Yes, sir.

Q. In those days were these various ferry roads shown here, the Kilcrease Ferry Road that crosses Price's Island and the Chamberlain Ferry marked up here, do you recall when those ferries were put in operation? A. Yes, sir.

Q. And they were used largely for what purpose? A. To cross the river was the main purpose.

Q. Well, people brought their products across the river here to get to this railroad? A. Yes, sir.

Q. And they were quite active? A. Yes, sir. Gilcrease and Chamberlain and on down and up the river, several of them.

Q. After the boll weevil came in did these ferries keep on operating? A. Yes, sir, they operated for quite a while.

Q. Then later, but later did the boll weevil still have an effect on this territory in here, an effect on the value of it? A. Yes, not only on that, but it ruined this country.

Q. Did it have anything to do with changing the character of this land here at Price's Island on both sides and on up the river? A. The use of it?

Q. Yes, sir. A. Yes, sir.

Q. Then paved roads were established and run along [Tr. 880] both sides up the river here, on both sides of this property here? A. At what period?

Q. Well, do you know about when South Carolina Highway No. 28 became an excellent paved road it is now going from Augusta on passed this property and on up the river and shown on the top here? A. The Highway 28 to McCormick from Augusta and from Augusta to Lincolnton are not very old. That has been within recent years, since the late thirties.

Q. And it was about the late thirties that the paved Georgia Highway—I forgot the number. A. It was not completed to Lincolnton until after they had begun work on the Clark Hill Dam. I remember going to Atlanta two

or three times to see the Highway Commissioners up there with a view of pushing it along, if possible.

Q. Then right up above where Chamberlain Ferry is now marked, there is a highway bridge put in across there? It is just shortly above this old—about where is the Chamberlain Ferry, that highway bridge from Chamberlain Ferry? A. To Lincolnton, Georgia?

Q. Yes? A. Along there. (indicating on map)

Q. Considerably above Chamberlain Ferry and shown on this map is Georgia Highway 43 on one side and South Carolina State Highway 43 on the other? A. Yes, sir.

Q. About when was that bridge built across there? [Tr. 881] A. I am not quite sure when it was completed, but it has been more or less recent.

Q. That eliminated all necessity for crossing on these ferries? A. Yes sir, when you got the bridge.

Q. Those ferries quit operating sometime ago, did they not? A. I am not positive about that, but quite sometime ago, yes.

Q. Now, coming down to the particular land here, Mr. Bell, as shown on Exhibit 25 of the Twin City lands, what occasion have you had to be familiar particularly with this? A. Well, I made an appraisal of Price's Island and another large tract on the Georgia side in March or April, 1947.

Q. In March or April of 1947, that is tract—— A. —This report was written on the 28th of April, that's about a 1000 acres of land—about 1064.47 acres——

Q. —yes—— A. —that appraisal was in April, 1947. Price Island was in March, 1947.

Q. You also appraised this E-434, this area in here, adjacent to Price's Island? A. Yes, sir.

Q. In those dates? A. Yes, sir.

Q. For the purpose of the timber on there as of the date of taking, do you have a copy of Mr. Hannold's cruise that is in evidence here? A. Yes, sir.

[Tr. 882] Q. Now, those two tracts, the two tracts that you have got there. I will point to them on Exhibit 25. Those two tracts that you appraised as the spring of 1947,

is Price's Island Tract E-439, and the adjacent tract of 1064.47 acres is tract E-434, is that right? A. Yes, sir.

Q. Do you have an opinion satisfactory to yourself as to the fair market value of those tracts at that time? A. At that time?

Q. As of June, 1947? A. Yes, sir.

Q. Before you give your opinion, did you appraise those two tracts separately? A. Yes, sir.

Q. State what you think the pertinent features of Price's Island were in the basis of your opinion? A. Price's Island had some very good land on it, bottom lands. The mode of getting to it was bad. It was very crude. There was no transportation. There were not boats there. I went over on the island twice on an old flat that you had to pull across there, and there was no way of getting from Price's Island across the Savannah River.

Q. Was all the boat service discontinued down there since the date of the boll weevil and these highways? A. Yes sir, it was discontinued. There was a "crip" across the river there that wasn't used, but you could attach a boat on to it and pull it over, but there was no public travelling at that time.

Q. What else did you take into consideration? [Tr. 883] A. Well, as I said, there was some good bottom land and some land that had been used for cotton and corn, upland, and there was some timber on it, but most of the timber had been cut, just recently cut, I would say not longer back than two years. The stumps were not too fresh.

Q. Mr. Bell, what was your opinion of Price's Island, Tract E-439, 328 acres, as of June 19, 1947, its fair market value of that date? A. About $6,000.00.

Q. Now, tract 1064.47 acres, constituting Tract E-434, what you consider about that tract? A. Well, my memorandum here states that tract had no improvements on it at all, except a small shed of no commercial value. The land had been abandoned for quite a long time, and it was badly erotted [sic], and it was never a very good place. The topography on it was bad. It was hilly and steep and some of it was real rocky.

Q. What would you say that its highest and best use was? A. At that time I would say the growing of timber and probably still is the growing of timber.

Q. While we are on the growing of timber, have you been active as a timber salesman in timber lands? Do you specialize in those at all? A. I would not say I specialize in those at all? I would not say I specialize in it, but I have sold a lot of it though over Georgia.

Q. And you still handle timber lands to some extent as a broker? [Tr. 884] A. Yes, sir.

Q. Who is the chief buyer of timber lands in bulk? A. Around Augusta, the most prominent is the Augusta Mills, Augusta Hardware Company. They are always in the market for timber and occasionally you can sell to sawmill people, but after they buy the tract they are through with it until they get rid of it.

Q. Does the timber market along the Savannah River through Augusta and through Columbia and on up, does it vary from county to county, or is the timber lands pretty well in competition with each other? A. Well, I would say they are pretty much in competition with each other. I wouldn't say there was any material difference in Columbia County, or McDuffie County, or Lincoln County or McCormick County. You have practically the same type of buyers in there.

Q. These timber buyers you speak of, they are interested in getting timber where you find it, are they not, generally speaking? A. Yes, sir.

Q. And what was your valuation of the fair market value of tract E-434, Mr. Bell, as of June 19, 1947? A. My appraisal was $8,700.00.

Q. Now, on the Georgia side of the river again, look at this map here, coming down to January 3, 1950, are there any other tracts along here that you were on and investigated near enough to January 3, 1950, to form an opinion as to value as of that date? [Tr. 885] A. No, sir. The last time I was in there was in 1947 and 1948. I think I went back in there on a second trip for a final appraisal, while I know the Georgia side very well, I have been in

there quite a bit and walked all over that territory, I didn't actually make a written appraisal except on those two tracts that we have just testified about.

Q. From your familiarity with that land up there, the balance of the land in this, that you have testified about, that you didn't appraise, that is each particular tract, could you give us a general discussion of this land up here? (indicating on map) A. There is quite a difference in the topography and terrane, the general terrain of it. It runs down to the river and has very small bottom, and the upland is rough, very little difference in that land.

Q. Now, you kept familiar with the market during 1950. Now, are you familiar with the market value of this land, the trend of the market in this area, from 1950? A. Yes, sir.

Q. Can you form just a per acre value of this land on the up river from years of experience as to what its fair market value would be per acre would be? A. From 15 to $25.00 per acre.

Q. From 15 to $25.00 per acre? A. Yes, sir.

Q. That would be both as to January 3, 1950, and July, 1950? A. Yes, sir.

[Tr. 886] Q. Now, to the South Carolina side of the river, what have been your familiarity with that? A. Is that east of Modock, or southeast of Modock or west of Modock?

Q. Well, just tell us about your general familiarity with the character of this land at any place, and then I am going to ask you about the lands that will be—I guess it would be up river from Modock. A. Well, down the river from Modock, from there to the dam, I have made appraisal of all the lands and the access railroad to the dam. I made individual appraisal on all of that land.

Q. Mr. Bell, in making those appraisals up to Modock, did you notice the tract where the Twin City Company railroad used to run? A. Yes, sir.

Q. By the way, have you been familiar with that area prior to that time? A. Yes sir, I know when they built that road. I don't remember just exactly the date, but I know about when it was built.

Q. Wasn't it about 1910? A. Yes, somewhere along there.

Q. Now, do you have any recollection about when they removed those rails? A. No, sir.

Q. Are you familiar enough with that area in that old right of way, that old railroad right of way, from your [Tr. 887] appraisals in this section as to form an opinion as to its value, that is, the 5.80 acres in the Clark Hill Area, extending down here, (indicating) not of the railroad, but of the land, a strip 30 feet wide as of July 5th—as of June, 1947, I mean. A. Other use for it, other than that of a railroad, it had no difference in value. It is similar land from C. & W. C. Railroad down to the river, and the value of that would hold on either side, that would be value of it, the value on either side of it.

Q. What did its value run in 1947? A. I would say around $15.00.

Q. Around $15.00? A. Yes, sir.

Q. You never had an occasion around 1949 and up to July 5, 1950, to go up this South Carolina side, above Modock, on these Twin City lands shown scattered along there? A. No sir, I did not. Soon after I quit appraising there, for a year or two I was sick. I wasn't sick enough to be in bed, but I had an attack of neuritis that prevented me from walking. I wanted to go in there, but I just couldn't.

Mr. MILLER: You may examine him.

CROSS EXAMINATION

By Mr. ROBINSON:

Q. Mr. Bell, from the time you began in business here in 1908, on this property known as being held for development of water power, is that the general reputation, so [Tr. 888] to speak, in the community? A. Yes, sir.

Q. And various people from time to time attempted to develop the stretch of the river above Augusta? A. Yes, sir, I did myself.

Q. When was that that you worked on it, Mr. Bell? A. I think it was in 1917.

Q. In 1917? A. Yes, sir. James Q. Jackson, who was known to the old timers here, I was kind-of a protege of his, and we promoted it together. We took an option on the Twin City from Mr. O'Connor, of Waterford, New York, or Watertown, New York, at the McElgin Hotel.

Q. Nothing came of that development? A. No, sir. We couldn't get the money.

Q. That was one of the best reasons? A. That's right.

Q. Now, Mr. Bell, on this railroad strip, land for a railroad frequently cost a great deal more per acre than the adjacent land, doesn't it? A. For railroad purposes, yes sir, it cost a great deal more.

Q. Could you say about the percentage more? A. It is hard to figure, Mr. Robinson. Some people want it and some don't. I have bought several right of ways in my time, and the most insignificant part of it sometimes cost you a great deal of money. There is no rule by which you could say what the right of way would cost you.

Mr. ROBINSON: No further questions.

[Tr. 889] Mr. G. E. WARD, Sworn for the Government, Testified.

DIRECT EXAMINATION

By Mr. MILLER:

Q. Mr. Ward, where were you born and raised? A. In Lincoln County.

Q. Do you live there now? A. Yes, sir.

Q. What do you do? A. Well, I farm. Of course, I don't do much of anything myself right now. I have it done. My son and I are in the lumber business and farming and cattle raising.

Q. Just give us a general idea. About how much land do you own scattered through Lincoln County of various

types? A. Well, we own quite a bit individually and then we own some jointly.

Q. What? A. My son and I owned some jointly, and then we own some individually, and it all totals up to around 2600 acres.

Q. And what is its various uses? A. I farm cotton, corn, grain, wheat, oats and pasture lands. We have been building in the last four or five years we have been building quite a few fences and so forth in connection with the cattle business.

Q. You own any cattle? A. Yes, sir.

Q. What kind of cattle do you own? A. White faced cattle.

Q. Do you operate any sawmills there now, and I am [Tr. 890] speaking of you and your son? A. Yes. We operate jointly. We do business together, all the way through the farm lands and the lumber business.

Q. Mr. Ward, have you bought any lands over there in McCormick County, in that area, in recent years? A. Lincoln County.

Q. Yes, Lincoln County. I am on the wrong side of the river? A. Yes, sir.

Q. Have you bought any in recent years that could be pointed out with respect to its location with respect to this map here, any areas shown on this map, Exhibit 25? A. Well, I bought 278 acres in one tract, and I bought 196 acres adjoining that. (indicating on map) I bought it at two different times. The 178 acres—I mean the 278 acres, I paid $1200.00 for it. I think that was in 1945, the 278 acres for $1200.00. Then about, around 1948, I wouldn't be exact about it, but I bought another tract adjoining that tract, 196 acres for $3,500.00. Now, that was right in this area, and they took every bit of that.

Q. This last tract that you bought is the one that was taken by the government? A. They took the 196 acres, and also the 278 acres because it was all right together, adjoining, right there.

Q. Well, more recently than that, have you bought some land to replace that? A. Yes sir, I bought land in five

miles of Lincolnton. [Tr. 891] I bought one tract in a half a mile of the city limits containing 64 acres, and I paid $2,500.00 for that.

Q. What was the character of ~~that~~ land? A. All timber land. Then I bought a tract in about five miles of Lincolnton just before Christmas, a 125 acres, for $3,750.00.

Q. How much? A. A 125 acres for $3,750.00.

Q. What was the character of that timber? A. It was just cut over land.

Q. Now, what was the date of this last sale, the last purchase you made? A. Which?

Q. The last purchase you made of 125 acres? A. The latter part of December.

Q. Of what year? A. 1951.

Q. The latter part of December, 1951? A. Yes, sir.

Q. Now, Mr. Ward, going back a minute; have you ever cut any timber right down here (indicating on map) close to this Twin City property on the South Carolina side? A. On the Lincoln County side.

Q. On the Lincoln side of the river. I can't keep on the right side of the river? A. Yes, sir.

Q. About when was that? A. I went in there in 1927, and I cut in there, off and on,—well, I would go out and buy a boundary on the outside [Tr. 892] maybe off and on for about 15 years. I sawed timber right in between the two rivers, on both rivers there.

Q. What was the names of the land that you said you were sawing that over? A. I was on the Georgia Power Company lands.

Q. The general lands you said you cut off there from 1927 on for a number of years, where did it lie with respect to Price's Island in tract E-434? A. Well, it was all timber land.

Q. I know, but where was it located with respect to these lands, with respect to Price's Island? A. Well, some of it went within a mile of Price's Island.

Q. Did you take any timber across Price's Island to the South Carolina side of the river? A. Yes, I bought Osbourne's ferry rights. He owned that ferry. He estab-

lished that ferry, and I bought his ferry rights and put it on this Island site—well, I believe we got one from Chamberlain's Ferry—I forget just where we got it, but anyway that was intact, that ferry had been kept intact.

Q. Chamberlain's Ferry, which one? A. Osbourne's Ferry. From South Carolina over to the Island it had been kept intact. The Island ferry had washed away during a flood, and I built a new ferry in order to transport lumber across that Island and on up to McCormick.

Q. Tell us just how you got timber from the mainland on Price's Island and on across Price's Island to the South Carolina side? [Tr. 893] A. Well, you had to cross the Island stream, which was on a ferry boat. It wasn't so wide, it didn't take so long to cross there. Then you had to go on to the island and go up the island and then get on a ferry again and carry it across into South Carolina. They had a cable there. That ferry was pulled across by a cable.

Q. Now, you put this up just for your lumber operations? A. Yes, I just put the Island string ferry up there.

Q. It wasn't operated as a public ferry back in those days? A. No, sir.

Q. From your experience, tell us and describe how the farmer got his farming equipment back and forth from Price's Island across that channel to Lincoln County? A. Well, they had a ferry there. The Osbourne Lumber Company, they were cutting in there just a little ahead of the time I went in there in 1927. Well, he had a mill in there, I think, cutting in there at the time I moved in there in 1927, and they used a ferry boat across that Island stream to go over there and farm it. Reed was farming it at the time I went in there.

Q. While we are on this; it is in evidence here, in a public document, that at one time there was an old flat boat, a poll boat used to go up that river. You remember that? A. Yes sir, I was old enough to remember that.

Q. How did they get through all of those shoals, if you know, just as a matter of information? [Tr. 894] Well, the darkies just put polls against the shoals and pushed it through there. I remember that I was bird hunting pretty

close to the river and I saw them on one of these shoals, and they looked like they weren't moving, just hollowering and standing still, and I sited my gun right by a little tree just to see if they were moving, and it looked like to me they stayed for an hour before they got over the shoal.

Q. What did they take up the river? What was the main product? A. Fertilizer.

Q. Going up and coming down? A. Yes sir, and cotton and so forth.

Q. How far back do you remember this area of the river where the Kilcrease Ferry used to be and when you saw this poll boat going up there, about how far back do you remember that was? A. Well, when I went through that section, it must have been, to the best of my recollection, about 1910.

Q. Now, can you give us an idea of the character and neighborhood of this country on both sides of the Kilcrease Ferry on the Lincoln County side around 1910 as compared to a later period after the boll weevil came? A. Well, I considered it one of the most prosperious sections of the county at the time until the advent of the boll weevil. It was more thickly populated and more white people lived in that section and big farming operations were going on, and the land was pretty much in farms, and after the boll weevil [Tr. 895] came about 1920 they still tried to farm a little but they couldn't make a go of it. The boll weevil destroyed it and most of the land just grew up in straw fields, and when I went down there in 1927, oh, there were just hundreds and hundreds of acres of land in straw fields. There were some few darkies farming some few patches around there a little bit. They just stayed on around there and worked a patch here and there.

Q. Well, prior to the boll weevils those old ferry roads were active highways with people passing back and forth from one side of the river to the other? A. Yes, sir. The lower end of the county marketed practically all of the cotton seeds over at Modock or Clarkston and Tom Branch. That was the three outlets they had there. They were pretty close together.

Q. Back as far as 1910, the land that was being farmed along that river there, what was the general nature of the timber? I mean prior to the first World War? A. Well, I didn't know anything about the timber land back in 1910. I was merely passing through there, and there was more land in cultivation at that time then there was in 1927 when I moved down in there.

Q. What occasion in recent years have you had to be familiar with—prior to the time of the taking, which I advise you was June 10, 1947—of this Price's Island and the adjacent tract which is E-434, consisting of a 1067 acres in there? A. Well, on Price's Island, as I say, I had a ferry across there, and I ferried lumber across there. I also went [Tr. 896] seining pretty often in the island stream, and I went back and forth across that island, and at that time the Reed family was working at McCormick, and I think it was in 1928 that the ferry washed away.

Q. No, I am talking about right down in recent times, in 1947, just before this land was taken; did you ever go on it for the purpose of making an appraisal and obtaining the value of Price's Island tract No. E-439? A. No, sir; I didn't. I started appraising on the Twin City Power land and I had a spell and had to quit.

Q. You didn't appraise on Price's Island? A. No, sir.

Q. Did you appraise any tracts on the South Carolina side of the river up here? A. You mean on the Georgia side?

Q. Oh, yes, on the Georgia side, I am talking about. A. I went on one fairly good size tract and one small tract.

Q. Now, will you identify the good size tract from this map? A. Yes, sir.

Q. Which tract was it? A. I am familiar with this land in here.

Q. Are you familiar with that of Price's Island? A. I cut timber on this here up to Wells' Creek. Right here.

Q. This tract here above this creek here, were you on it? (Indicating on map) [Tr. 897] A. Yes, sir.

Q. You cut timber up here on this part? A. Yes, sir, I cut some off there on down to here, about here.

Q. Taking your familiarity with this land—have you had copies of Mr. Hannold's timber cruises which are in evidence here? A. Yes, sir.

Q. Taking that information as to the quantity of timber on there, do you think you can form an opinion as to the value of these tracts at Price's Island, and tract E-434, as of June 1947? A. Yes, sir.

Q. Have you an opinion satisfactory to yourself? A. Yes, sir.

Q. Price's Island, Tract E-439, 328 acres, do you have an opinion satisfactory to yourself of the fair market value of that land as of June 19, 1947? A. I think I do. I have my opinion about it.

Q. What is that opinion? A. You want it as a whole?

Q. Price's Island, yes, as a whole, or any way you want it? A. About $10,000.00.

Q. About $10,000.00? A. Yes, sir.

Q. Did you classify that in evaluating it, Mr. Ward? A. Yes, sir.

Q. You might just give us that? [Tr. 898] A. I figured the land at $50.00 an acre, and the timber land at $30.00. I made a break down of it.

Q. Now, this 1064.47 acres, shown on this exhibit 25, as of June 19, 1947. Do you have an opinion as to the fair market value of that satisfactory to yourself from your best judgment and experience? A. Yes, sir.

Q. Give us the round figures first? A. About $21,000.00.

Q. About $21,000.00. A. Yes, sir. I went the strongest way there. It was so near $21,000.00.

Q. Did you make any classification on it, or did you evaluate it as a whole? A. I evaluated it as a whole. There wasn't any improved land on there, no open land, or cultivated land, all more or less cut over land. Per acre, I added the timber value to that.

Q. That is your valuation of the land as a whole, including the timber? A. Yes, sir.

Q. Is that the way timber land is bought and sold around here, as a whole, with the timber on it? A. Well, that is the way most of the lumbermen buy it. We put a value on

how much timber is there. We haven't been putting too much value on the land. We figured on getting the land for nothing.

Q. But that is timber land? [Tr. 899] A. Yes, sir, although things have changed somewhat.

Q. Now, that price per acre that you put on there, how much was that? A. Yes—you mean on that land?

Q. Yes. A. As a whole?

Q.Yes. You put $21,000.00 as a whole, including such timber as there was? A. It will figure a little better than $22.00 an acre.

Q. A little better than $22.00 an acre? A. Yes, sir.

Q. That total per acre value figures out at $21,000.00? A. Well, I figured the land at $17.00 an acre, and then added the timber value to it was $2,314.00, and really it figured out at $20,829.99, and I just rounded it off at $21,000.00.

Q. You rounded it out at $21,000.00? A. Yes, sir.

Q. Now, the tract in Civil 521, as of January 3, 1950, which is tract E-443. Are you familiar with those tracts on the map? First, have you got those evaluated separately as of January 3, 1950? A. Yes, sir.

Q. Will you give us the value on that? What is your value on tract E-443 as of January 3, 1950? A. $11,500.00.

Q. And of E-446? A. $2,339.00, but I just rounded it out at $2,350.00.

[Tr. 900] Q. $2,350.00? A. Yes, sir. I just rounded it out at that.

Q. Tract E-457? A. $5,000.00 even.

Q. How many acres have you got in there? A. Now, wait a minute, what was the number?

Q. Tract E-457? A. I was looking at the wrong one, excuse me. It was $490.00, but I rounded it out at $500.00, as a round figure.

Q. Have you got tract E-457 as a 24.26 acre tract? A. Yes, sir.

Q. That is the Blackwell tract up here somewhere, in green? A. Yes, sir.

Q. Now, what was your figure on that? A. $500.00.

Q. You rounded that out? A. Yes, it wa $490.00 and I rounded it off at $500.00.

Q. Tract E-498, that little 3.02 acre tract up there? A. $85.00.

Q. Tract G-600, 247.06 tract? A. That was $5,000.00. That was G-600, wasn't it?

Q. That was G-600. A. Yes, sir.

Q. $5,000.00? A. Yes, sir, it run so close to that until I just rounded it out at that figure.

Q. You just rounded that one out at $5,000.00 also? A. Yes, sir. I didn't allow but $51.00 an acre and I [Tr. 901] rounded it off at $5,000.00.

Q. Now, come down to Civil Action 537, and this is of July 13, 1950, the dates which I will ask you about. Now, take tract E-449, which is 5.51 acre tract of the Blackwell land, what was that? A. That was $110.00.

Q. Tract G-616, consisting of 121.53 acre tract, I believe it is? A. I rounded that off at $3,000.00.

Q. Tract G-627, consisting of 546.78 acres? A. $11,500.

Q. Tract G-694, a 10 acre tract, have you got that? A. Yes, sir.

Q. How much is it? A. $300.00.

Q. $300.00? A. Yes, sir.

Q. Did you get over on the South Carolina side of the river enough to form an opinion as to values A. No, sir.

Q. Mr. Ward, what do you consider the highest and best use of this land? A. Growing timber.

Q. Have there been any possibilities of anybody making anything or turning that into grazing lands? A. Well, it would cost, and it would depend on how they went about it. If they went about it like most people do now, taking a bull dozer and pushing it up and clearing all the roots out and re-seeding it. I mean seed it and fertilize it, [Tr. 902] I don't think it would be practical. A man might go in there and kill the timber and let it rot down, let the stumps rot out and pile them up and burn them and clean it up cheaper that way, however, labor is so high now I don't know whether he could do it any cheaper that way or not, but I don't think it would be practical for pasture

use, other than what you might just call wild pasture for bottom lands that would be available to run cattle on.

Q. Does it have any better value that way? A. I would not root up a good stand of pine at no time to plant a pasture. I can make money faster growing pine than I can growing cows.

Q. You consider timber land as its highest and best use? A. Yes, sir.

Q. Now, on that basis, do you find the price of timber varies from county to county? Timber men buy it wherever they find it practically—in other words, I will put it this way, there was no competition as timber men buy timber wherever it is practical, generally speaking, don't they? A. Well, there is not too much variation in the value of timber of the same kind. The value of timber depends on how well it is on the land, how thick it is on the land and how much it costs you to get it together to saw it up, and how easily you can get to it, how accessible it is for a man to get in and get it out. There is some timber that has a value on land, yet if a man gave it to you you would go broke sawmilling it and trying to get it out because it is not thick enough on the land to make it profitable to cut it.

[Tr. 903] Q. This land along here (indicating on map), from Mr. Hannold's cruise and from what you know about it, any timber on there sufficient to pay a man to cut the timber now on this land that you valuated, this Twin City Power land on the Lincoln County side of the river? A. I saw one tract that would.

Q. What tract was that? A. The tract adjoining the Reed tract just above there.

Q. Well, you had better point it out on the map. Have you got a copy of the timber cruise with you? That might help you identify it on the map. This is Price's Island here? A. Yes, sir.

Q. This is the old Armstrong Lumber Company? A. Yes, sir, that is it there.

Q. E-443? A. Yes sir, I think it is.

Q. That timber was so spotted on that tract that it would be all right for you to go in and cut it? A. That would be

considered fairly good sawmilling, considering what is in the county now, because practically all of it is cut out. It shows a timber value there of $4,295.00.

Q. On Tract Number E-443? A. Yes, sir.

Mr. MILLER: You can examine the witness.

Commissioner MCFADDEN: All right, Mr. Robinson, you may proceed.

[Tr. 904] CROSS EXAMINATION

By Mr. ROBINSON:

Q. Mr. Ward, you told us that timber has gotten rather scarce in Lincoln County, Georgia? A. Yes, sir.

Q. Has the price gone up as it became more scarce? A. Yes, sir. The price is up. I don't know, good timber would—as I said, it, of course, varies in accordance to the nature of the timber and how it stands on the land and where it is and what it cost you to get it out to the market, but we haven't got any more timber in Lincoln County for sale that would bring hardly any price now. If we had any it would bring a good price. It would bring around $30.00 a thousand. That is good timber, 6 and 8 and 10 inches.

Q. That is pine timber? A. Yes, sir.

Q. Would prices have been lower in 1950 or higher or about the same in 1950? A. Well, the price was about the same as it was in 1950, according to my recollection of the sales that we made.

Q. Would 1947 have been lower than 1950? A. Yes, sir.

Q. And I believe you told us that this land that we are talking about, in your opinion, has its best use as being farmed for timber purposes? A. Yes, sir.

Q. And Mr. Ward, where they have got scattered trees like it over a part of this property, the best thing to [Tr. 905] do is to re-seed it until you get a heavy stand? A. Yes sir, timber don't seem to thrive where it is sparsely left on the land with a tree here and yonder. I don't know

why it is, but it is a part of nature, but it don't thrive where you cut it down too thin.

Mr. ROBINSON: I believe that is all I want to ask him.

Commissioner MCFADDEN: We don't have any questions, Mr. Ward. Thank you for coming.

Mr. MILLER: If we could have something to eat, I think maybe I can rest when we come back.

Commissioner MCFADDEN: Then suppose we recess and get something to eat and come back here at 2:30.

NOTE: Accordingly at this point a recess was had from 12:55 P.M., until 2:30, P.M., at which time the proceedings were resumed as follows on next page No. 996.

* * * * *

[Tr. 952] Sales—McCormick County, South Carolina: Twin City Power Company Comparison

Grantor	Grantee	Date	Deed Book	Page	Acres	Considera-tion	Price Per Acres	Relative Weight
W. J. Hines	T. C. Faulkner	Jan. 10, 1949	17	289	285	$4,275.00	$15.00	Given medium weight
Wm. M. Lindley	M. G. & J. J. Dorn, Inc.	21/49	18	16	301.4	6,025.00	19.99	Given medium weight
T. C. Faulkner	Gair Wood Lands Corp.	May 25/46	17	69	363.8	5,430.00	14.92	Weighted for trend
Louise Marmon	M. G. & J. J. Dorn, Inc.	Dec. 13/47	17	209	140.	3,500.00	25.00	Given medium weight, much better timber
F. M. Oakley	H. T. Morange	Jan. 1945	16	104	1760	14,100.00	8.01	Weighted for trend only.
Harry Reeves (Edmund Parker Place)	International Paper Co.	Apr. 4/48	17	230	1011.5	22,500.00	22.24	Sample of cattle and timber farm
Elizabeth Cooley	International Paper Co.	May 4/48	17	231	274.25	5,000.00	18.23	Weighted for contract of location better timber paved road.

[Tr. 953] Sales—Lincoln County, Georgia—Twin City Company Comparisons

Grantor	Grantee	Date	Deed Book	Page	Acres	Considera-tion	Price Per Acre	Relative Weight
Mrs. H. H. Breeman	Roy Edmonds and Wayne Goolsby	signed 4/11/45 Recorded Mar. 19/47	12	283	250.5	1,127.25	4.50	Weighted for trend same condition as to timber.
J. H. Ashmore	H. D. Cullers	Dec. 21, 1946	13	183	500.	8,000.00	16.00	Weighted for trend—more timber and reproduction.
J. M. Poland	F. M. Freeland	Nov. 14/46	13	164	50.	500.00	10.00	Weighted for trend.
Crawford	W. T. Dunaway	Jan. 10/48	12	354	577.75	11,555.00	20.00	Given medium weight, better location, better timber.

[Tr. 954] Government Witness Spencer Cooley

Civil Action No. 432—D/T Filed June 19, 1947

Tract No.	Acreage	Per Acre Value	Value
E-434	1,064.47	$14.09	$15,000.00
E-439	328.00	20.60	6,760.00
Total	1,392.47 Acres		

Civil Action No. 521—D/T Filed January 3, 1950

Tract No.	Acreage	Per Acre Value	Value
E-443	429.51	$23.74	$10,200.00
E-446	128.03	18.15	2,325.00
E-457	24.26	18.13	440.00
E-498	3.20	21.85	70.00
G-600	247.06	18.61	4,600.00
Total	832.06 Acres		

Civil Action No. 537—D/T Filed July 13, 1950

Tract No.	Acreage	Per Acre Value	Value
E-449	5.51	$18.14	$ 100.00
G-616	121.53	21.72	2,640.00
G-627	546.78	23.13	12,650.00
G-694	10.	25.00	250.00
Total	683.82 Acres		

South Carolina Cases:

Civil Action No. 1033—D/T Filed December 21, 1949

Tract No.	Acreage	Per Acre Value	Value
F-500	1,033	$23.62	24,400.00
H-700	497	24.74	12,300.00
Total	1,530 Acres		

Civil Action No. 1073—D/T Filed July 5, 1950

Tract No.	Acreage	Per Acre Value	Value
H-732	70.00	$18.50	$ 1,295.00
F-541	5.00 (part)	60.00	300.00
Total	75.00 Acres.		

[Tr. 955] Government Witness—J. M. Cox

Civil Action No. 1033—D/T filed December 21, 1949

Tract No.	Acreage	Value
F-500	1,033	$24,744.80
H-700	497	$12,799.00
Total	1,530 Acres	

Civil Action No. 1073—D/T filed July 5, 1950

Tract No.	Acreage	Value
H-732	70.00	$ 1,257.00
P-541	5.00 (part)	100.00
Total	75.00 Acres	
Claimed 40 acres of Tract No. H-703		$.....
Claimed Railroad Rt-of-way 5.80 acres		$.....

[Tr. 956] Timber Cruise Appraisal Report

Project Clark Hill — Tract No. E-443

Name of Owner Twin City Power Company of Georgia
Location Reservoir Area—Lincoln County, Georgia
Area (Acres) 429.51 — Area (Woodland) 414.44

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Sawtimber-Pulpwood-Cordwood

Units of measure	Piece Products, Etc. Kind	Diameter Range	Unit Price	Total
135 M	Sawtimber-Pine	8-12"	15.00	$2,025.00
25 M	Sawtimber-Oak	10-16"	10.00	250.00
5 M	Sawtimber-Gum	10-12"	14.00	70.00
5 M	Sawtimber-Yellow Poplar	10-12"	14.00	70.00
100 Units	Hardwood Pulpwood		1.00	100.00
672 Units	Pine Pulpwood		2.50	1,680.00

Remarks: — Total Timber Value $4,195.00

Date As of 3 Jan 1950

Signed CLARK D. HONNOLD,
Appraiser & Timber Cruiser

Form SAD-360 (Revised 3/7/52).

[Tr. 957] Timber Cruise Appraisal Report

Project Clark Hill — Tract No. E-446

Name of Owner Nettie Blackwell Estate & Twin City Power Co. of Georgia.
Location Reservoir Area—Lincoln County, Ga.
Area (Acres) 28.03 — Area (Woodland) 108.03

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber-Pulpwood-Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
7 M	Sawtimber-Misc. Hardwood	10-16"	12.00	$ 84.00
5 Units	Hardwood Pulpwood		1.00	5.00
132 Units	Pine Pulpwood		2.50	330.00

Remarks: — Total timber value $ 419.00

Signed CLARK D. HONNOLD,
Cruiser

Date As of 3 Jan. 1950
Form SAD—360 (Revised 3/7/52)

[Tr. 958] Timber Cruise Appraisal Report

Project Clark Hill

Name of Owner Twin City Power Co. of Georgia and Nettie Blackwell Estate — Tract No. E 457

Location Reservoir Area, Lincoln County, Georgia

Acres 24.26 — Chain Tally

Number Board Feet

(Basis used to be 16 foot logs)

Diameter of Tree—18 inches from ground—by inches

Kind of Timber	8 Inches to 14 Inches	14 Inches and up	Total Board Feet	Value per 1,000 Feet	Total Value
Pine	8–10″		1 M	15.00	15.00

No. Units of Pulpwood 2 — Valued at $1.00 — Total $2.00

No. Units of Pulpwood 25 — Valued at $2.50 — Total $62.50

Total Timber Value 79.50

Dated 23 July 1948

Signed CLARK D. HONNOLD,
Cruiser

Form SAD—360 (Rev. 4–17–46) (Make extra tally sheet for each tract cruised)

[Tr. 959] Timber Cruise Appraisal Report

Project Clark Hill — Tract No. E–498

Name of Owner Twin City Power Company of Georgia

Location Reservoir Area—Lincoln County, Georgia

Area (Acres) 3.2 — Area (Woodland) 3.2

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, etc.	Diameter Range	Unit Price	Total
5 M	Sawtimber Hwd.....	12.00	6.00	
1 Unit	Hardwood Pulpwood.....	1.00	1.00	
6 Units	Pine Pulpwood.....	2.50	15.00	

Remarks — Total Timber Value $ 22.00

Signed CLARK D. HONNOLD,
Cruiser

Date As of 3 Jan 1950

Form SAD–360 (Revised 3/7/52)

[Tr. 960] Timber Cruise Appraisal Report

Project Clark Hill Tract No. G-600

Name of Owner Twin City Power Company of Georgia
Location Reservoir Area—Lincoln County, Georgia
Area (Acres) 247.06 Area (Woodland) 246.83

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber-Pulpwood-Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
15 M	Sawtimber-Pine.....	8-10"	15.00	$ 225.00
29 M	Sawtimber-Misc. Hwd.....	10-12"	12.00	348.00
40 Units	Hardwood Cordwood.....		1.00	40.00
Remarks:		Total Timber Value		$ 897.00

Signed CLARK D. HONNOLD,
Cruiser.

Date as of 3 January 1950

[Tr. 961] Timber Cruise Appraisal Report

Project Clark Hill

Name of Owner Twin City Power Co. of Ga. Tract No. E-440
Nettie Blackwell Est.
Location Reservoir Area
Acres 5.51 Chain Tally.....

Number Board Feet

Diameter of Tree—18 inches from ground—by inches

Kind of Timber	8 Inches to 14 Inches	14 Inches and up	Total Board Feet	Value per 1,000 Feet	Total Value

No merchantable Timber on this Tract.

No. Cords of Cordwood..... Valued at $..... Total $.....
No. Cords of Pulpwood..... Valued at $..... Total $.....
Total Timber Value $.....

Signed CLARK D. HONNOLD,
Cruiser

Dated as of Aug. 1, 1950

Form SAD-360 (Rev. 4-17-46) (Make Extra tally sheet for each tract cruised.)

[Tr. 962] Timber Cruise Appraisal Report

Project Clark Hill Tract No. G-616

Name of Owner Twin City Power Company of Georgia
Location Reservoir Area—Lincoln County, Georgia
Area (Acres) 121.53 Area (Woodland) 121.53

(Basis Used:)

Diameter of Tree—4½ Feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
18 M	Sawtimber–Pine	8–12"	15.00	$ 270.00
276 Units	Pine Pulpwood		2.00	552.00
Remarks:		Total Timber Value		$ 822.00

Signed CLARK D. HONNOLD,
Cruiser.

Date as of 13 July 1950
Form SAD-360 (Revised 3/7/52)

[Tr. 963] Timber Cruise Appraisal Report

Project Clark Hill Tract No. G-627

Name of Owner Twin City Power Company of Georgia
Location Reservoir Area—Lincoln County, Georgia
Area (Acres) 546.78 Area (Woodland) 529.78

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
54 M	Sawtimber–Pine	8–17"	15.00	$ 810.00
14 M	Oak–Sawtimber	10–14"	10.00	140.00
9 M	Sawtimber–Gum	10–14"	12.00	108.00
12 M	Sawtimber–Misc. Hwd.	10–16"	10.00	120.00
57 Units	Hwd. Pulpwood		1.00	57.00
596 Units	Pine Pulpwood		2.50	1,490.00
Remarks:		Total Timber Value		$2,725.00

Signed CLARK D. HONNOLD,
Cruiser

Date as of 13 July 1950
Form SAD-360 (Revised 3/7/52)

[Tr. 964] Timber Cruise Appraisal Report

Project Clark Hill — Tract No. G-694

Name of Owner Twin City Power Company of Georgia
Location Reservoir Area—Lincoln County, Georgia
Area (Acres) 10 — Area (Woodland) 10

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
5 M	Sawtimber–Misc. Hwd.	10–16″	12.00	$ 60.00
12 Units	Hwd. Pulpwood		1.00	12.00
18 Units	Pine Pulpwood		2.00	36.00
		Total Timber Value		$ 108.00

Remarks:

Signed CLARK D. HONNOLD,
Cruiser

Date As of 13 July 1950
Form SAD-360 (Revised 3/7/52)

[Tr. 965] Timber Cruise Appraisal Report

Project Clark Hill — Tract No. F-500

Name of Owner Twin City Power Company of S. C.
Location Reservoir Area--McCormick County, S. C.
Area (Acres) 1,033 plus 5.8 R.O.W. — Area (Woodland) 10,231

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
193 M	Sawtimber–Pine	8–18″	16.00	$3,088.00
60 M	Sawtimber–Oak	10–20″	10.00	600.00
120 M	Sawtimber–Gum	10–24″	12.00	1,440.00
8 M	Sawtimber–Yellow Poplar	10–16″	12.00	96.00
23 M	Sawtimber–Hickory	10–18″	8.00	184.00
47 M	Sawtimber–Cottonwood	10–22″	10.00	470.00
5 M	Sawtimber–Ash	10–12″	14.00	70.00
1,368 Each	Cedar Posts		.10	136.80
120 Units	Hardwood Pulpwood		2.00	240.00
620 Units	Pine Pulpwood		3.00	1,860.00
		Total Timber Value		$8,184.80

Signed /s/ CLARK D. HONNOLD,
Cruiser

Date As of 21 Dec 1949
Form SAD-360 (Revised 3/7/52)

[Tr. 966] Timber Cruise Appraisal Report

Project Clark Hill

Name of Owner Twin City Power Co. of Ga. Tract No. E-434
Location Reservoir Area, Lincoln County, Ga.
Acres 1064.47 Chain Tally.....

Number Board Feet

Diameter of Tree—18 Inches from ground—by inches

Kind of Timber	8 inches to 14 inches	14 inches and up	Total Board Foot	Value for 1,000 Feet	Total Value
Pine	10–12"		22 M	13.00	286.00
Hardwood	10–18"		42 M	10.00	420.00

No. of Cords of Cordwood..... Valued at $..... Total $.....
No. Units of Pulpwood 804 Valued at $2.00 Total $1,608.00
Total Timber Value $2,314.00

Dated as of 19 June 1947 Signed /s/ CLARK D. HONNOLD,
Cruiser

Form SAD-360 (Rev. 4-17-46) (Make extra tally sheet for each tract cruised)

[Tr. 967] Timber Cruise Appraisal Report

Project Clark Hill Tract No. H-700

Name of Owner Twin City Power Company of South Carolina
Location Reservoir Area—McCormick County, S. C.
Area (Acres) 497 Area (Woodland) 497

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
34 M	Sawtimber–Pine.....	10–18"	18.00	$ 612.00
20 M	Sawtimber–Oak.....	10–16"	10.00	200.00
35 M	Sawtimber–Gum.....	10–18"	15.00	525.00
36 M	Sawtimber–Yellow Poplar.....	10–20"	18.00	648.00
8 M	Sawtimber–Ash.....	14–20"	14.00	112.00
13 M	Sawtimber–Maple.....	16–18"	10.00	130.00
12 M	Sawtimber–Cottonwood.....	12–16"	12.00	144.00
190 Each	Cedar Posts.....		.10	19.00
154 Units	Hardwood Pulpwood.....		2.00	308.00
614 Units	Pine Pulpwood.....		3.50	2,149.00

Remarks: Total Timber Value $4,847.00

Signed /s/ CLARK D. HONNOLD,
Cruiser

Date As of 21 Dec 1949
Form SAD-360 (Revised 3/../52)

[Tr. 968] Timber Cruise Appraisal Report

Project Clark Hill Project

Name of Owner Twin City Power Co.
Location Reservoir Area
Acres 328.0

Tract No. E–439

Chain Tally ¼ acre plots

Number Board Feet
(Basis used to be—16 foot logs)
Diameter of Tree—18 inches from ground—by inches

Kind of Timber	8 inches to 14 Inches	14 Inches and up	Total Board Foot	Value for 1,000 Feet	Total Value
Pine	10–14″		3 M	8.00	24.00
Hdw	10–20″		26 M	6.00	156.00

Hwd No. Units of Cordwood 850 Valued at $1.00 Total $850.00
Pine No. Units of Pulpwood 40 Valued at $1.25 Total 50.00
Total Timber Value $1,080.00

Dated 27 March 1947

Signed /s/ CLARK D. HONNOLD,

Form SAD–360 (Rev. 4–17–46) (Make extra tally sheet for each tract cruised)

[Tr. 969] Timber Cruise Appraisal Report

Project Clark Hill

Tract No. H–732

Name of Owner Twin City Power Company of South Carolina
Location Reservoir Area—McCormick, S. C.
Area (Acres) 70

Area (Woodland) 70

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
4 M	Sawtimber–Gum	10–18″	12.00	48.00
1 M	Sawtimber–Ash	10–16″	15.00	15.00
2 M	Sawtimber–Cottonwood	10–16″	10.00	20.00
24 Units	Hwd. Cordwood		1.00	24.00

Remarks:
Total Bd Ft. 1052 M

Total Timber Value $ 107.00

Signed /s/ CLARK D. HONNOLD,
Cruiser

Date As of 5 July 1950
Form SAD–360 (Revised 3/7/52)

[Tr. 970] Timber Cruise Appraisal Report

Project Clark Hill Tract No. F 541

Name of Owner L. T. Anderson
Location Res. Area, McCormick Co., S. C.
Area (Acres) 76.16 Area (Woodland) ....

(Basis Used:)

Diameter of Tree—4½ feet from ground—by inches

Quantities & Units of Measure	Kind Sawtimber–Pulpwood–Cordwood Piece Products, Etc.	Diameter Range	Unit Price	Total
105 M	Pine Sawtimber	8"–16"	20.00	2,100.00
5 M	Miscl. Hwd.	10"–12"	15.00	75.00
8 U	Hwd. Pulpwood		2.00	16.00
213 U	Pine Pulpwood		4 00	852.00
Remarks:		Total Timber Value		$3,043.00

Signed /s/ CLARK D. HONNOLD,
Cruiser

Date As of 5 July 1950.
Form SAD-360 (Revised 3/7/52)

REPORT OF COMMISSIONERS

To the Honorable C. C. Wyche, United States District Judge for the Western District of South Carolina, and to the Honorable F. M. Scarlett, United States District Judge for the Southern District of Georgia:

The undersigned, as Commissioners, comprising a commission in equity in the above entitled proceedings, respectfully submit herewith the following Report:

By Orders of Honorable C. C. Wyche, United States District Judge of the Western District of South Carolina, and Honorable F. M. Scarlett, United States District Judge of the Southern District of Georgia, the above entitled proceedings were referred to Commissioners, as provided in Rule 71A (h) of the Rules of Civil Procedure, said Orders authorizing the Commissioners to hear the issues presented in the above entitled proceedings, both those arising in South Carolina and those arising in Georgia, relating to the value of the lands in South Carolina of The Twin City Power Company, and the lands in Georgia of The Twin City Power Company of Georgia, taken from those Corporations by The United States of America in the exercise of its power of eminent domain. Said Orders provided that the Commissioners should have the powers

of a Master, and should be governed by the provisions of Rule 53 of the Rules of Civil Procedure, so far as such provisions were applicable.

Thereafter, by appropriate Orders issued by Honorable C. C. Wyche and Honorable F. M. Scarlett, the undersigned were appointed Commissioners; the issues of just compensation insofar as they affect the Twin City Power Company and the Twin City Power Company of Georgia being referred to us for determination.

Pursuant to such appointments as Commissioners, a series of hearings in the above entitled proceedings were held in The United States District Court Houses, in Greenwood, South Carolina, and in Augusta, Georgia; the first of said hearings being on January 25th, 1952, and the last of said hearings being on October 31st, 1952.

At the same time, issues of just compensation with respect to certain properties, and possibly certain alleged incorporeal rights, of Augusta Power Company, which had been taken from Augusta Power Company by The United States of America in the exercise of its power of eminent domain, were likewise referred to the undersigned, as Commissioners; but, at the first hearing held in Greenwood, South Carolina, on January 25th, 1952, it was stipulated by and between attorneys for The United States of America and for the Augusta Power Company that all questions of value of properties taken from Augusta Power Company by The United States of America should be continued, and not considered, until the Commissioners had made their findings relative to the value of the properties taken from Twin City Power Company and Twin City Power Company of Georgia. (See Record of Hearing on January 25th, 1952, Pages 2 and 3). By reason of this stipulation, nothing herein contained is determinative of any right or rights to compensation which the Augusta Power Company may have by reason of the fact that The United States of America has taken certain of its properties in the exercise of its power of eminent domain, and no rights of Augusta Power Company have been considered except insofar as a consideration of same have been

necessary to determine the actual holdings of Twin City Power Company and Twin City Power Company of Georgia which were taken by The United States of America, and for which said Corporations claim just compensation.

At these various hearings of the issues in the above entitled proceedings, a rather substantial amount of evidence was presented to the Commissioners for their consideration, and the parties in interest in these proceedings have introduced in evidence a considerable number of exhibits, and the Transcript of Record of the testimony offered, and the exhibits introduced in evidence by the various parties in interest in these proceedings, are submitted together with this Report. While some of the testimony was offered, and some of the exhibits were introduced in evidence, while the hearing was being held in The United States District Court for the Southern District of Georgia, in Augusta, and, likewise, while some of the evidence was offered, and some of the exhibits introduced in evidence, while the hearing was being held in The United States District Court for the Western District of South Carolina, in Greenwood, it was stipulated by and between counsel for The United States of America and counsel for Twin City Power Company, Twin City Power Company of Georgia, and William P. Dauchy, Trustee, that all exhibits put in evidence, and all evidence contained in the Transcript of Record, should be considered as having been offered in evidence in both The United States District Court for the Western District of South Carolina and in The United States District Court for the Southern District of Georgia, so that the record herewith presented, together with this Report, applies with equal force to the proceedings arising in The United States District Court for the Western District of South Carolina and to the proceedings arising in The United States District Court for the Southern District of Georgia.

Between June 19th, 1947, and July 13th, 1950, The United States of America filed Declarations of Taking in both The United States District Court for the Southern District of Georgia and in The United States District Court for the

Western District of South Carolina, by which, in the exercise of its power of eminent domain, it took from Twin City Power Company of Georgia and Twin City Power Company certain lands owned by those Corporations in fee, and also certain lands in which those Corporations claimed to have flowage rights and what, for the sake of convenience, were termed option rights. The properties of these Corporations lie on and adjacent to both sides of the banks of the Savannah River, and extend from the location of Price's Island up the river for a distance of approximately eleven (11) miles. The principal issue before the Commissioners in these proceedings is to determine the just compensation which those Corporations are entitled to receive by reason of the taking of said properties from them by The United States of America in the exercise of its power of eminent domain; said properties being necessary for the construction and establishment of a dam at Clark Hill and its necessary storage basin.

The United States of America, plaintiff in these proceedings, does not attack the de facto existence as Corporations of the Twin City Power Company and the Twin City Power Company of Georgia; it is uncontradicted that the Twin City Power Company of Georgia is a subsidiary of the Twin City Power Company, a South Carolina Corporation, and that the Twin City Power Company owns all of the stock of the Twin City Power Company of Georgia. Also, it is uncontradicted that these Corporations issued a substantial amount of bonds, and that William P. Dauchy is the present holder of these bonds as Trustee for the beneficial owners thereof. For the sake of convenience, and to avoid repetition, Twin City Power Company and Twin City Power Company of Georgia will be hereinafter referred to by the designation of "Twin City", and it is intended that said designation shall apply to both Corporations.

The principal issues between the plaintiff, The United States of America, and the defendants, Twin City, arise with respect to a determination of the just compensation to which Twin City is entitled by reason of the taking of

its properties by The United States of America. The evidence shows that, between the years 1901 and 1910, principally, Twin City acquired a site at what is known as Price's Island, on and in the Savannah River, for the purpose of constructing a dam for the creation of hydro-electric power; and, in furtherance of its intention to create a hydro-electric power development on the Savannah River, purchased a substantial number of acres on both the Georgia and South Carolina sides of the Savannah River, on and immediately adjacent to the banks of said river, for the purpose of using said lands as a storage basin for the hydro-electric dam to be constructed at Price's Island. The history of this proposed development will be considered in some detail hereafter, but the evidence rather conclusively establishes the fact that Twin City had in mind the erection of a dam for a sixty-foot head of water, and that approximately Four Hundred (400) Acres, in addition to what it owned, would be required for the storage basin for the sixty-foot dam. With exceptions so small as to be of no consequence, The United States of America took all of these properties, both the dam site and the acreage for the storage basin, in the above entitled proceedings.

Twin City's position is that just compensation, under these circumstances, means the payment to it of a sum which will represent the value of these properties as a potentially integrated hydro-electric power development, and that its water power value is the true measure of damages in these cases.

On the other hand, it is the position of The United States of America that, inasmuch as Twin City had held these properties for some thirty-five or forty years, without establishing a hydro-electric water power project there, and since, by reason of the fact that a project, of the nature proposed and at the proposed location, was no longer a licensable project at the time of the taking by plaintiff, its potential water power value is not the proper measure of damages, but that the value of the properties taken from Twin City should be determined on the basis of their agricultural or wild forest land value. Plaintiff further main-

tains that, after the Declaration of Taking in Civil Action No. 432, filed on June 19th, 1947, in which Tracts E-434 and E-439, containing 1,064.47 Acres and 328.00 Acres, respectively, were taken, the other properties of Twin City certainly had no further power value; and, consequently, even if power value afforded the true measure for arriving at just compensation, such valuation would only be considered with respect to the acreage taken in Civil Action No. 432, and no existence of power value should be considered in connection with the lands and other property rights taken from Twin City in the other actions.

In order to reach a conclusion relative to the just compensation to which Twin City is entitled, it first becomes necessary to determine the extent and nature of the properties or property rights which have been taken from Twin City in these proceedings by the plaintiff in the exercise of its right of eminent domain. In reaching a determination of the extent and nature of these properties of Twin City, a number of issues have been raised which are collateral to the principal issue of just compensation, and it becomes necessary to determine these collateral issues or questions before a consideration of the principal issue before the Commissioners.

On September 18th, 1952, plaintiff herein, The United States of America, by its Attorney, and Twin City Power Company, Twin City Power Company of Georgia, and William P. Dauchy, as successor-trustee, by their Attorney, stipulated

"For the purpose of trial of valuation only, that Twin City Power Company of Georgia owned fee title in the following Tracts taken in the following proceedings by declarations of taking filed on the following dates in the United States District Court for the Southern District of Georgia:

Civil Action No. 432—D/T Filed June 19, 1947

Tract No.	Acreage	
E-434	1064.47	
E-439	328.00	
Total	1392.47	Acres

Civil Action No. 521—D/T Filed January 3, 1950

Tract No.	Acreage
E–443	429.51
E–446	128.03
E–457	24.26
E–498	3.20
G–600	247.06
Total	832.06 Acres

Civil Action No. 537—D/T Filed July 13, 1950

Tract No.	Acreage
E–449	5.51
G–616	121.53
G–627	546.78
G–694	10.00
Total	683.82 Acres

Total Georgia Lands—2908.35 Acres

Note:

1. Calhoun A. Mays, et al, as Trustees for Augusta Power Company, claim flowage rights or easements in Tract E–443 and Tract G–600.
2. J. W. Blackwell and J. W. Blackwell, as Administrator of the estate of Nettie Blackwell and the heirs of Nettie Blackwell, as duly named and served in Civil Actions Nos. 521 and 537, had an undivided 3/5 interest in Tracts E–446, E–457 and E–449.
3. Included in Tract G–627, Civil Action 537, as above set out, is 75 acres based on a deed from Annie P. Robinson, Exhibit 1, page 148. This matter is subject to the contentions of the parties as appears in the record."

At the same time, these parties further stipulated that

"For the purpose of trial of valuation only, it is stipulated that Twin City Power Company owned fee title in the following tracts taken in the following proceedings by declarations of taking filed on the following dates in the Western District of South Carolina:

Civil Action No. 1033—D/T Filed December 21, 1949

Tract No.	Acreage
F–500	1033.
H–700	497.
Total	1530. Acres

Civil Action No. 1073—D/T Filed July 5, 1950

Tract No.	Acreage
H–732	70.00
F–541 (part)	5.00
Total	75.00 Acres

Civil Action No. 786—D/T Filed June 23, 1947

Tract No.	Acreage
C-215	5.80 (Part, Old R. R.)
Total South Carolina Lands	1610.80 Acres
Total Fee Acreage in Georgia and South Carolina	4519.15

Note: The five acres above listed out of Tract F-541 of Civil No. 1073, is based on a deed from Martha Harris, Exhibit 1, page 173. Tract F-541, as a whole, appears to be previously owned or claimed by defendant L. T. Anderson, et al, and this matter is subject to the contentions of all interested parties, as will appear in the record."

At the same time, these parties further stipulated that

"Subject to plaintiff's objections that the deeds set out in defendants' Deed Book, Exhibit 1, and the originals thereof are insufficient to convey or prove title, that the flowage easements have been abandoned under all the evidence, and that the options contained therein do not create a compensable interest in land nor any legal or equitable estate therein and have expired and become unenforceable under all the evidence, it is stipulated that the following deeds purport to grant the options and flowage easements therein described and, assuming a dam creating an 80 foot head at the downstream end of Price's Island, or as called for in said deeds, the acreage would be as follows:

C/A	Tract	Deed Book Page Ex. 1	Date of Deed Yr. only	Grantor to Twin City	Flowage acres	"Options" Acres
Georgia Land Acquired by Purchase	G–636	473	1910	Asa H. Vickery	32	
So. Carolina Lands						
1073	C–221 C–222 F–547	151	1909	Thos. Robertson		28.32
1033	(C–223)					
Acquired by Purchase	F–502	173	1909	Martha Harris		27.15
1073	F–541					
Acquired by Purchase	F–525	136	1906	Jos. L. Bussey	54.4	
1073 U. S. Forestry Lands	F–520 F–521 F–589	161	1909	T. J. Barrett		41.
1033	H–701 H–702	142	1907	L. F. Dorn		67.86
1038	H–704	145	1907	Stone & Jennings		42.81
1073	F–564	119 122 125	1907 1906 1907	W. J. Talbert	75. 2. 25.	174.28
1073	H–719	169	1909	N. G. & J. C. Brown		17.00
1073	H–703	148	1907	Annie P. Robinson		347.16
	Total Acreage				188.5	745.58

Note:

1. The property rights, if any, conveyed by these instruments are to be determined by the language of the deeds and the terminology in the stipulation "flowage acres" and "options acres" has no legal significance and is used merely as a convenience."

Also, at the same time, and by the same stipulation, the parties stipulated that

"The defendant's claim of ownership of an easement for a transmission line right of way 100 feet in width and running along the South Carolina side of the river from a point opposite Price's Island to North Augusta, South Carolina, is based on deeds appearing in Deed Book, Exhibit 1, at pages 800-893. This matter is subject to the contentions of the parties as appear in the record and the objections hereinabove set out with respect to flowage easements."

[At this point, beginning with the words "In connection

with the so-called lands" of Twin City (page 11 of the mimeographed copy of the "Report of Commissioners") the Commissioners passed upon the rights of Twin City and others in some of the condemned lands. Discussion of these matters concludes with the last complete paragraph on page 37 of the mimeographed Report, just before "Having determined the issues relative to questions of lands and rights in lands," etc.

Since the questions decided in these parts of the Report are not being reviewed it is believed their omission will facilitate the Court's consideration of the appeals and as well reduce the costs of appeal. Accordingly, and since the full Report of Commissioners is before the Court in the record forwarded from the district court, appellant takes the liberty of omitting them from the Appendix.]

Having thus determined the issues relative to questions of lands and rights in lands, it appears that Twin City has fee simple title to 2,908.35 acres in the State of Georgia, and fee simple title to 1,610.80 acres of land in South Carolina, making a total of 4,519.15 acres to which it has title in fee. In order to be exact, however, it should be noted that the Blackwell heirs and the Blackwell Estate have an undivided 3/5ths interest in 157.80 acres of these lands, they being portions of Tracts Nos. E-446, E-457, and E-449. However, the record establishes that there is no controversy between Twin City and the Blackwell heirs and the Blackwell Estate with reference to these 157.80 acres, and these parties have agreed that such compensation as is awarded for the taking of these acres shall be divided between Twin City and the Blackwell owners in the proportion of 2/5ths to Twin City and 3/5ths to the Blackwell heirs.

In addition, Twin City had valid enforceable flowage rights over 188.5 acres of land, of which 32 acres were situate in Georgia, being Tract G-636, and the remainder were situate in South Carolina, being Tracts F-525, H-704 and F-564. (See Record, Volume 5, page 46.)

In order to understand the contentions of the parties, it becomes necessary to state the factual situation in some de-

tail, although such will be summarized herein as briefly as is possible, consistent with clarity.

The history of Twin City is set out in extenso in the testimony of Mr. George E. O'Connor, a witness for defendant, (R. pps. 90-117), and of Mr. William A. Farley, a witness for the plaintiff, (R. pps. 430-495).

From that testimony, it appears that Twin City Power Company, a South Carolina Corporation, was incorporated under the laws of the State of South Carolina, in the year 1900, and Twin City Power Company of Georgia, a Georgia Corporation, was incorporated under the laws of the State of Georgia in the year 1901. Twin City Power Company owns all of the stock of Twin City Power Company of Georgia. About the year 1901, Twin City, using that term to cover both the parent corporation and its subsidiary, became indebted in the sum of approximately One Million ($1,000,000.00) Dollars, and executed a mortgage to secure such indebtedness to Merchants Trust Company of New York. At the present time, William P. Dauchy, of New York, is Trustee under the terms of this mortgage. All stock in the parent corporation and its subsidiary is owned by members of the O'Connor family, either directly or through the parent corporation. Twin City started acquiring land, with a view to the building of a hydro-electric dam and appurtenant storage basin, in the year 1900, and the acquisition of lands and rights in lands for this purpose continued until the year 1911, there being only minor acquisitions, of little consequence, after the year 1911. Some time between the years 1910 and 1915, Twin City built a railroad track from Modoc, South Carolina, to the dam site, a distance of approximately two and one-half miles, and this railroad siding remained there until approximately 1937, when the track had fallen into disrepair, had not been used, and the rails were taken up and sold for scrap iron rather than to permit them to rust away and lose their entire value.

Between 1901 and 1922, Twin City received licenses, under various Acts of Congress, some six or seven in number, to erect a hydro-electric power dam on the Savannah River, some of these Acts merely granting extensions of

time within which to commence the work on the project. During the period from 1901 until 1922, Twin City had various surveys of the project made, for the purpose of determining the feasibility, the economic practicability, and the cost of erecting such hydro-electric power dam along its property holdings on the Savannah River. The latest survey and report was that made by The Ambursen Company, which was first made about 1914 or 1915, but which appears to have been kept current, and reasonably up-to-date, until after World War II.

The last authorization to construct such project having expired, in 1922, Twin City got a preliminary permit to construct such project on the Savannah River from the Federal Power Commission during the year 1925, but later refused to comply with the terms of the preliminary permit, and tried to apply for permanent authorization, basing such action on the ground that the Federal Power Act was unconstitutional. However, after the preliminary permit was granted to Twin City, Savannah River Electric Company intervened, and opposed the granting of permanent authorization to Twin City. In the latter part of 1925, or the early part of 1926, Savannah River Electric Company applied to the Federal Power Commission for a permit to construct a hydro-electric dam on the Savannah River, which proposed project would absorb the holding of Twin City. However, it never obtained such authorization; and, due, no doubt, to the economic situation which prevailed shortly thereafter, seems to have abandoned the idea of building such project for quite a number of years thereafter.

At one time, Savannah River Electric Company instituted proceedings to condemn the holdings of Twin City, but such action was abandoned, and Savannah River Electric Company never resumed such effort again thereafter.

At the Conclusion of World War II, Savannah River Electric Company applied to the Federal Power Commission for a permit to construct a hydro-electric dam at a point which is almost identical with that of the present Clark Hill dam site, but such authorization was refused,

due to the fact that the United States desired to build a governmentally owned hydro-electric dam at the approximate site which Savannah River Electric Company proposed to use; and, at that time, public power projects were greatly favored as compared with such projects being built and owned by private capital.

During these years after World War II, Twin City had negotiated with Savannah River Electric Company, as well as with some other corporation, looking toward a sale of the Twin City properties to such other corporations; but, of course, when it became evident that no privately financed project could be licensed on the Savannah River, these negotiations were discontinued.

It also appears that, shortly after President Roosevelt came into office, and when public projects began to assume increasing importance, numerous surveys of the Savannah River, from the Clark Hill dam site up the river for many miles, were made, and numerous reports were submitted to the President and to various governmental bodies and officials. The result of this interest of the United States in this portion of the Savannah River as a site for the establishment of a hydro-electric power project in the present Clark Hill Dam.

As appears from the record, and particularly from the testimony of Mr. O'Connor, above referred to, the last specific contemplated purpose for the use to which these holdings of Twin City should be put was the sale of same to Savannah River Electric Company or some other similar private croporation which desired, or might desire, to construct such project along the Savannah River.

These holdings of Twin City comprise the proposed dam site at Price's Island, and extend up the Savannah River a distance of approximately eleven miles to what is designated as Chamberlain's Ferry; and, prior to these takings by the United States in the exercise of its power of eminent domain, these holdings constituted substantially what was needed for the construction of a dam at Price's Island and the establishment of a storage reservoir as an incident thereto. Twin City, as the record shows, particularly Ex-

hibits 24 and 25, had holdings on both sides of the Savannah River, as well as islands in the river, and would have needed to acquire only about 400 acres more to construct a dam to provide a 60-foot head of water at Price's Island. These specific details will be gone into more fully hereinafter.

It is uncontradicted that the site where Twin City proposed to construct this power project consists of timber lands and pasture lands, for the most part, with very little of its lands of approximately 4,500 acres being used for farming. There were no improved roads, no utility lines, no railroads, no bridges, no buildings, and practically no improvements of any nature that would have to be removed, raised, or otherwise provided for had the proposed dam at Price's Island been constructed.

Also, the record shows, without contradiction, that Twin City acquired all of its holdings by private negotiations and purchase, and never exercised the power of condemnation in its acquisition of any of these lands or rights in land.

As the record shows, the first date of taking of lands of Twin City by The United States was in 1947, being in June of that year, and the other actions hereinabove referred to were commenced after that date.

[At this point, beginning with the words "Under these circumstances" (page 42 of the mimeographed copy of the "Report of Commissioners") the commissioners dealt with Twin City's claim based on water power value. Discussion of this claim concludes with the one sentence paragraph at the center portion of page 67 of the mimeographed Report stating "We respectfully recommend that the Court award judgment to Twin City in each of these actions in amounts and in the manner hereinabove specified and set out."

Since the questions decided in these parts of the Report were disposed of by the Supreme Court and are not presently being reviewed, it is believed their omission will facilitate the Court's consideration of the instant appeals and as well reduce the costs of appeal. Accordingly, and since the full Report of Commissioners is before the Court

in the record forwarded from the district court, appellant takes the liberty of omitting them from the Appendix.]

At the final hearing of the above entitled causes on October 31st, 1952, it was stipulated that payments of these awards, or judgments, should be made to Twin City and to William P. Dauchy, as Successor-Trustee, jointly. However, by letter of November 11th, 1952, counsel for Twin City stipulated and specified that such awards or judgments, should be paid to William P. Dauchy, Successor-Trustee, only, and that such payment would discharge in full all claims which Twin City should have, or claim to have, against plaintiff herein. This, of course, is subject to the rights of the parties upon appeal, and subject to further order of this Court and subsequent proceedings herein.

At the commencement of the hearings in these actions, counsel for plaintiff and for Twin City requested that this Commission make alternate findings; so that, if the Commission found that water power value was the true basis upon which to find just compensation, the Commission should still determine what, in its opinion, was the sound and just value of the lands taken, based upon agricultural or wild forest lands valuation. Conversely, in the event the Commission had determined that agricultural or wild forest lands value was the true basis in finding just compensation, it should likewise determine what, in its opinion, was the true value of the lands taken for water power purposes. The purpose of this, of course, was, and is, to eliminate the necessity of having to hold additional hearings, and take further testimony, in the event that the Court should determine that the findings of this Commission are erroneous. Consequently, what is hereafter set out is the opinion of the Commission as to the true value of these lands taken from Twin City, based upon their agricultural or wild forest land value. However, as has been hereinabove set out, it has been the opinion of the Commission that just compensation requires the determination of value based upon potential water power value. At the various hearings before the Commission, numerous witnesses testified as to what, in their opinion, was the true market value

of the lands of Twin City taken by plaintiff in these condemnation proceedings, based upon their agricultural or wild forest land valuation. All of these witnesses, testifying as to the land value, disassociated from potential water power value, were competent land evaluators, and the Commission was fully advised as to various land valuations by them.

The testimony of W. M. Henderson and of B. R. T. Todd, witnesses for Twin City, is fully set out on pages 356-397 and 398-421, respectively, of the Record. Testimony of witnesses for plaintiff, as to such land valuations, is contained as follows: that of Spencer R. Cooley, on Pages 786-875 of the Record; the testimony of Gould Barrett, at Pages 712-727 of the Record; the testimony of H. H. Bell, at Pages 876-888 of the Record; the testimony of Clark D. Honnold, at Pages 703-757 of the Record; the testimony of G. E. Ward, at Pages 889-905 of the Record; and the testimony of James M. Cox, at Pages 758-785 of the Record.

As will appear from the testimony of these various witnesses, their estimates as to land values varied greatly, the range being from Ten ($10.00) Dollars per acre to as much as One Hundred Fifty ($150.00) Dollars per acre, and the totals of the valuations which they placed upon the total lands owned by Twin City varied greatly.

After careful consideration of the testimony of these various witnesses, it is the opinion of the Commission that the land valuations for lands in Georgia given by the witness G. E. Ward are correct; that the land valuations given for lands in South Carolina by the witness James J. Cox are correct; and that the timber valuations given by the witness Clark D. Honnold are correct.

In addition, the Commission is of the opinion that the value of these lands was increased by the assemblying of all the tracts comprising the holdings of Twin City into one large block of land, and that consideration should be given to the fact that the plaintiff acquired something more than 4500 acres of land in one block from Twin City. All the witnesses agreed that such consolidation of lands under one ownership added to the value, but most witnesses had

difficulty in specifying the amount by which such value was increased. However, the Commission is of the opinion that such assemblying increased the value of each acre by Five ($5.00) Dollars, and this opinion is supported by the testimony of Gould Barrett, witness for plaintiff, who stated that, in his opinion, it was worth from Two ($2.00) Dollars to Five ($5.00) Dollars per acre to assemble the lands under one unified or single ownership (R., 726).

Consequently, in arriving at land valuation, this Commission has taken the valuations of witness Ward for the Georgia lands, the witness Cox for the South Carolina lands, has added thereto the timber valuations of the various tracts as valued by the witness Honnold, and has added a value of Five ($5.00) Dollars per acre to these lands by reason of their having been collected and assembled into one unified ownership.

Of course, in computing land valuations, no consideration whatever was given to the so-called "flowage acres". Twin City did not have fee title to these acres, designated as "flowage acres"; and, if water power valuation is not the true basis for determining just compensation, then these flowage acres have no value whatsoever in the hands of Twin City.

Using the above basis for our findings, it is our opinion that the following agricultural and the following wild forest land valuations should be given to the lands owned by Twin City at the times of the respective takings:

Georgia Lands:

Civil Action No. 432. Declaration of Taking Filed June 19, 1947.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
E–434	1064.47	$21,000.00	$2,314.00	$23,314.00
E–439	328.00	10,000.00	1,080.00	11,080.00
				$34,394.00
Value of assembling @ $5.00 per acre				6,962.35
Total Value				$41,356.35

Civil Action No. 521. Declaration of Taking Filed January 3, 1950.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
E–443	429.51	$11,500.00	$4,195.00	$15,695.00
E–446	128.03	2,350.00	419.00	2,769.00
E–457	24.26	500.00	79.50	579.50
E–498	3.20	85.00	22.00	107.00
G–600	247.06	5,000.00	897.00	5,897.00
				$25,047.50
Value of assemblying @ $5.00 per acre				4,160.30
Total Value				$29,207.80

Civil Action No. 537. Declaration of Taking Filed July 13, 1950.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
E–449	5.51	$110.00	$ None	$110.00
G–616	121.53	3,000.00	822.00	3,822.00
G–627	546.78	11,500.00	2,725.00	12,225.00
G–694	10.00	300.00	108.00	408.00
				$16,565.00
Value of assemblying @ $5.00 per acre				3,419.10
Total Value				19,984.10

Note: Allocation should be made of the values of Tracts Nos. E–446, E–457 and E–449, the heirs of the Blackwell Estate receiving 3/5 of the values of said tracts, and Twin City receiving 2/5 of the values thereof.

South Carolina Lands:

Civil Action No. 786. Declaration of Taking Filed June 23, 1947.

Tract	Acreage	Land Valuation	Timber Valuation	Total
C–215	5.80	$ None	$ None	$ No value
Assemblying value @ $5.00 per acre				29.00
Total Value				$29.00

Civil Action No. 1033. Declaration of Taking Filed December 21, 1949.

Tract	Acreage	Land Valuation	Timber Valuation	Total
F–500	1033.00	$24,744.80	$8,184.80	$32,929.60
H–700	497.00	12,799.00	4,847.00	17,646.00
				$50,575.60
Value of assemblying @ $5.00 per acre				7,650.00
Total Value				$58,225.60

Civil Action No. 1073. Declaration of Taking Filed July 5, 1950.

Tract	Acreage	Land Valuation	Timber Valuation	Total
H–732	70.00	$1,257.00	$107.00	$1,364.00
F–541 (part)	5.00	100.00	200.00	300.00
				$1,664.00
Value of assemblying @ $5.00 per acre				375.00
Total Value				$2,039.00

Interest should be paid, at 7% in Georgia, from the respective Dates of Declarations of Taking, and at 6% in South Carolina, from the dates of the respective Declarations of Taking.

Therefore, if it be finally adjudged that the Commission was in error in determining that water power value was the true basis for determining the value of the property taken from Twin City by plaintiff in these actions, we respectfully recommend that the Court do award judgment to Twin City in the amounts set out hereinabove, based upon the agricultural or wild forest land value of these properties.

However, as appears above, this Commission is of opinion that the Court should award judgments in favor of Twin City, to be paid to William P. Dauchy, Successor-Trustee, pursuant to stipulation of counsel for Twin City, based upon potential water power value hereinabove set out specifically and at some length.

All of which is respectfully recommended.

(S.) George Barrett,
(S.) David W. Johnson,
(S.) J. Means McFadden
Commissioners.

May 14th, 1953.

Part IX of the Government's Objections to the Report of Commissioners Filed May 29, 1953.

* * * * * *

IX

The commission specifically made two errors in computing market value of defendants' land for agricultural and forestry purposes:

1. The commission correctly found the land values in the amounts testified to by plaintiff's witnesses Ward and Cox, the highest of all the competent witnesses on such valuations under all of the evidence. But the commission erred in adding thereto the separate value of the timber in the cruises by plaintiff's witness Honnold for the reason that this witness was specifically tendered as giving evidence, not of market value or competent as to market value, but for the restricted purpose of furnishing facts to be used and considered by witnesses, subsequently offered and tendered as competent to evaluate the land as a whole including timber and all other elements. The witnesses Ward and Cox and all of plaintiff's witnesses so evaluated the land, that is the land as enhanced by the timber. The commission included the value of the timber twice.

2. The commission erred in adding to their land valuations the sum of $5.00 per acre as the cost of assembling the lands under one unified or single ownership. As appears this was based on a hypothetical question addressed by the commission to plaintiff's witness Gould Barrett in which the witness was asked to assume the assemblage of small tracts into one unified holding of 4,500 acres. Under all of the evidence and more particularly the stipulation as to tracts and holdings and defendants' Exhibit 25, defendants did not have one unified holding but several tracts varying in acreage from five acres to the largest of 1,600 or 1,700 acres scattered for eleven miles on both sides of the Savannah River. The commission's findings in this regard are contrary to the entire evidence of the witness upon which the findings are based.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA AUGUSTA DIVISION

C/A No. 432

UNITED STATES OF AMERICA

vs.

12,122.54 ACRES OF LAND, MORE OR LESS, IN LINCOLN COUNTY, GEORGIA, ET AL.

C/A No. 521

UNITED STATES OF AMERICA

vs.

4,916.92 ACRES OF LAND, MORE OR LESS, SITUATED IN LINCOLN AND COLUMBIA COUNTIES, GEORGIA, ET AL.

C/A No. 537

UNITED STATES OF AMERICA

vs.

10,848.42 ACRES OF LAND, MORE OR LESS, SITUATE IN COLUMBIA, LINCOLN, MCDUFFIE, WARREN AND WILKES COUNTIES, GEORGIA, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA GREENWOOD DIVISION

C/A No. 786

UNITED STATES OF AMERICA

vs.

3,928.09 ACRES OF LAND, MORE OR LESS, IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

C/A No. 1033

UNITED STATES OF AMERICA

vs.

3,906.24 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

C/A No. 1038

UNITED STATES OF AMERICA

vs.

12,138.74 ACRES OF LAND, MORE OR LESS, SITUATED IN McCORMICK COUNTY, SOUTH CAROLINA, AND SAVANNAH RIVER ELECTRIC COMPANY, ET AL.

C/A No. 1073

UNITED STATES OF AMERICA

vs.

5,231.66 ACRES OF LAND, MORE OR LESS, SITUATED IN McCORMICK COUNTY, SOUTH CAROLINA, AND ANNIE PEARL ROBERTSON, ET AL.

Objections to Report of Commissioners

To the Honorable J. Saxton Daniel, Unied States Attorney for the Southern District of Georgia; the Honorable John C. Williams, United States District Attorney for the Western District of South Carolina; W. Braxton Miller, Esq., Attorney, Department of Justice; W. Reeves Lewis, Esq., Assistant to the United States Attorney; Attorneys for the United States; Calhoun A. Mays, Esq., Henry C. Howard, Esq., and J. W. Bradford, Jr., Esq., Attorney for the Augusta Power Company; A. Russell McGowan, Esq., J. D. Parler, Esq., and Edgar A. Brown, Esq., Attorneys for Annie P. Robinson:

You will please take notice that the defendants, Twin City Power Company, Twin City Power Company of Georgia, and William P. Dauchy, substitute Trustee, object to the Report of the Commissioners dated May 14, 1953 and filed on May 21, 1953, in the following particulars:

1. *The finding and conclusion of the Commissioners (Report 18-19) that the deed of Annie P. Robinson to Twin City Power Company of January 16, 1907 (Exh. 1, p. 148) conveyed no lands in fee in South Carolina;* the error being that said finding disregards the language of the deed: "the line on the shore to run by and with the flood line and far enough back to include 75 acres"; that such a line is readily capable of determination by a surveyor; that the parties to the deed intended to convey to Twin City the portion of Annie P. Robinson's lands which would be flooded by a dam in the Savannah River, limiting such conveyance to 75 acres; that to effectuate such intention, the boundary of the conveyed land must be a "flood line" as specified in the deed; that where a power company sought to acquire and a land owner owning lands on both sides of the river intended to give the right to raise the level of the river by a dam down stream, it is illogical to construe the deed so as to convey only one side of the river which would be useless without the other, and that such finding fails to give consideration to other evidence in the cause which tends to

establish the construction that South Carolina lands are conveyed by the instrument.

2. *The exclusion from evidence and from consideration (Report 19) of the defendants' tendered Exhibit 47;* the error being that this Exhibit was relevant to the issue of the construction of the Annie Robinson deed, was furnished to the defendants by the plaintiff and is a document entitled to be judicially noticed.

3. *The conclusion (Report 29-30) that the defendants had no property interest in and therefore were not entitled to compensation for their easements in 745.58 acres of land referred to in the Report as "option acres";* the error being that each of the deeds conveying these properties transferred to the defendants or to one of them a present easement in each parcel.

4. *The failure of the Commissioners (Report 37) to give consideration to the transmission easement owned by Twin City and running from Price's Island to North Augusta;* the error being that this easement was a valuable part of the defendant's integrated power site.

5. *The finding (Report 40) that the Savannah River Electric Company never obtained a Federal Power Commission license;* the error being that the record shows that such a license was obtained in 1928 and cancelled at the request of the Savannah River Electric Company in 1932 (F.P.C. Project 798).

6. *The finding (Report 41) that negotiations were had between Savannah River Electric Company and Twin City for the acquisition of the latter's properties after World War II;* the error being that such finding was too limited as to time and should have added the fact that negotiations for such a sale were had with Savannah River both before and after World War II and with other prospective purchasers prior to World War II.

7. *The finding (Report 59) that the witness Logan stated that "the property of Twin City could not be properly evaluated by any of those four methods;"* the error being that such finding did not correctly reflect the witness' whole testimony in that the witness testified that the value of the

Twin City properties was a judgment figure to be arrived at by a competent evaluator, considering all relevant factors.

8. *The finding (Report 61) that the Commissioners would not consider the Twin City holdings except in connection with a 60 foot development;* the error being that the Twin City properties had a potential value for use in connection with higher head developments at Price's Island and at other dam sites.

9. *The finding (Report 63-4) that the valuation of the property of Twin City should be reduced $343,966.80 by reason of the Commission's holding that Twin City had no easement or other property interest in 745.58 acres considered by the witness Creager as belonging to them;* the error being that the Commissioners misinterpreted the testimony of the witness Creager as to the necessity of paying a "hold-up" value for the acreage needed to complete the Twin City integrated site in the following particulars:

(a) The witness Creager, on whose evidence the Commissioners relied in this phase of the case, testified that in arriving at the market value of the Twin City holdings he took into consideration the fact that the deeds granting the easements and "option acres" were old and that Twin City would have to pay the agreed price (usually $20.00 per acre) or more because of that age. His testimony as to the market value of th Twin City holdings ($1,600,000.00) would not be changed if the Court ruled the "option acres" and the "easement acres" invalid since he took into consideration possible infirmities in the instruments in arriving at market value (E. 156, 163-4, 270).

(b) The witness Creager in using the "hold-up" price of $460.00 per acre for the acquisition of the 400 acres of similar land not owned by Twin City and needed for a sixty foot (60′) development with a five foot (5′) surcharge at Price's Island assumed that the actual market value of this land for agricultural purposes was Eighty ($80.00) Dollars per acre. He multiplied this figure by 5.7 to arrive

at a "hold-up" value which he calculated a developer would have to pay for its acquisition (R. 174-5). Since the Commissioners have found (Report 65-67) that the agricultural value of similar Twin City lands (including timber) averages only $28.00, the value of the 745.58 acres used by the Commissioners should be reduced in the proportion of $28.00 to $80.00 (28/80 × $343,966.=$120,381.) or from $343,966 to $120,381.

(c) The witness Creager, in estimating the "hold-up" cost of acquiring acres in addition to the 400 acres required for a 60 foot development testified that the price per acre would be less since the "hold-up" factor per acre is less for larger acreages (R. 175, 194-5). Therefore an even lower figure should be used if the Twin City properties are to be evaluated, as they should be, on the basis of a dam higher than 60 feet.

(d) The Commissioners failed to consider that the witness Creager had already taken into consideration the necessity for the payment of the additional price of some $20.00 per acre required by the deeds (R. 156-7, 164).

(e) The portion of the 745.58 "option acres" needed for a 60 foot development is only 112 acres (Exh. 24, 25, 28).

10. *The finding (Report 69) that the agricultural valuations for lands in Georgia by the "witness G. E. Ward are correct;* the error being:

(a) That by so doing the Commission failed to give any consideration to the testimony of the admittedly "competent land evaluators" (Report 66) who testified for the defendants;

(b) That G. E. Ward, the sole reliance of the Commissioners, is primarily a farmer and cattle raiser (R. 889) with land trading experience only for his own account and hence not as competent as the more experienced appraisers and evaluators offered by the defendants;

(c) That the witness G. E. Ward did not actually appraise any of the Georgia lands, except "one fairly good size tract and one small tract" (neither identified) (R. 896).

In fact, Mr. Ward "started appraising on Twin City Power Land and I had a spell and had to quit" (R. 896).

(d) That it does not appear that the witness considered the timber raising potential of this land.

11. *The finding (Report 69) that the agricultural valuations for lands in South Carolina by the witness, James M. Cox "are correct";* the error being:

(a) That by so doing the Commission failed to give any consideration to the testimony of the admittedly "competent land evaluators" (Report 68) who testified for the defendants;

(b) That James M. Cox, the sole reliance of the Commissioners, is primarily a furniture and general merchant, a farmer and sawmill operator, and therefore not as competent a guide as the more experienced appraisers and evaluators offered by the defendants.

12. *The finding (Report 71) that a portion of Tract C-215 (5.80 acres) had no value;* the error being:

(a) That this finding has no support in the testimony;

(b) That by so doing the Commission failed to give any consideration to the testimony of the admittedly "competent land evaluators" (Report 68) who testified for the defendants.

13. *The failure of the Commissioners to find that the value of the Twin City holdings as of the time of taking were reasonably worth at least $1,600,000.00;* the error being that the record as a whole clearly established such a valuation.

14. *The failure of the Commissioners to find that the agricultural values of the Twin City holdings (excluding any consideration of their hydro-electric potential) as of the time of taking were reasonably worth at least an average of $60.00 per acre or a total of some $271,140.00;* the error being that the record as a whole clearly established such values.

These defendants move that the United States District Court for the Southern District of Georgia and the United States District Court for the Western District of South Carolina, respectively, take such action on these objections

and on the report of the Commissioners as may be proper, and to make their own determination as to whether the allocation of the award between the several civil actions is appropriate or whether some different method of allocation should be embodied in the judgments of each Court.

ROBINSON, ROBINSON & DREHER,
DAVID W. ROBINSON,
Attorneys for the Defendants,
908 Palmetto Building,
Columbia, S. C.

JUNE, 2, 1953.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA

C/A 786, 1033, 1073

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

TWIN CITY COMPANY, DEFENDANT.

PETITION

The petition of the Twin City Power Company would respectfully show to this Court that subsequent to the entry of judgments in its favor in this Court in each of the three above entitled actions and after the affirmance of these judgments by the United States Court of Appeals for the Fourth Circuit the Supreme Court of the United States reversed the judgments in these cases and remanded the causes to this Court for proceedings not inconsistent with the mandate of that Court.

That prior to the judgments entered in these causes these matters were referred by the Honorable Court to Commissioners who made their report to the Court as will more fully appear by the records herein. In the judgment of this petitioner it is necessary that the causes now be reopened in order to receive additional testimony appropriate for determination of the issues of just compensation in accordance with the mandate of the Supreme Court of the United State

WHEREFORE, your petitioner prays that these causes be reopened and that they be rereferred to Commissioners for the purpose of receiving testimony and reporting to this Court.

Respectfuliy submitted,

DAVID W. ROBINSON
Counsel for Twin City Power Company

APRIL 25, 1956.

Filed Apr. 30, 1956

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, GREENWOOD DIVISION

CIVIL ACTION No. 786

Tract No. C-215

UNITED STATES OF AMERICA

vs.

3,829.09 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.,

CIVIL ACTION No. 1033

Tracts Nos. F-500 and H-700

UNITED STATES OF AMERICA

vs.

3,906.24 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.,

CIVIL ACTION No. 1073

Tracts Nos. H-732 and F-541 (part)

UNITED STATES OF AMERICA

vs.

5,231.66 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

NOTE AS FOR ENTRY OF JUDGMENT

Now comes the plaintiff, in the above designated civil actions, without waiving its objections to the Commission's report, and moves the Court as follows:

1. To enter an order making the judgment of the Supreme Court of the United States in these actions, decided January 23, 1956, the judgment of this Court;

2. To enter a judgment based on agricultural and forestry values in accordance with the original award returned by the Commission determining that just compensation for the taking of the properties formerly owned by the defendants are in the following sums:

Civil Action No. 786. Declaration of Taking Filed June 23, 1947.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
C-215	5.80	$ None	$ None	$ No value
Assemblying value @ $5.00 per acre				29.00
Total Value				$ 29.00

Civil Action No. 1033. Declaration of Taking Filed December 21, 1949.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
F-500	1,033.00	$24,744.80	$ 8,184.80	$32,929.60
H-700	497.00	12,799.00	4,847.00	17,646.00
				$50,575.60
Assemblying value @ $5.00 per acre				7,650.00
Total Value				$58,225.60

Civil Action No. 1073. Declaration of Taking Filed July 5, 1950.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
H-732	70.00	$ 1,257.00	$ 107.00	$ 1,364.00
F-541 (part)	5.00	100.00	200.00	300.00
				$ 1,664.00
Assemblying value @ $5.00 per acre				375.00
Total Value				$ 2,039.00

(S.) JOSEPH E. HINES
United States Attorney

(S.) ROBERT A. CLAY
Assistant United States Attorney

Filed May 3, 1956

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, GREENWOOD DIVISION

CIVIL ACTIONS NOS. 786, 1033 AND 1073
UNITED STATES OF AMERICA, PLAINTIFF,

vs.

TWIN CITY POWER COMPANY, ET AL.

RESPONSE TO PETITION FOR REOPENING AND REREFERRAL

In response to the petition filed by Twin City Power Company requesting that these causes be reopened and referred again to Commissioners plaintiff says:

That the Commissioners determined the issue of just compensation in these actions by returning in their report to this Court findings based on agricultural and forestry values harmonious with the decision of the Supreme Court of the United States herein;

That these findings were made for the express purpose of eliminating the necessity of having to hold additional hearings and take further testimony in the event that the findings on hydroelectric power operations were determined to be erroneous;

That inasmuch as findings on hydroelectric power operations were held invalid by the Supreme Court of the United States in these actions plaintiff says, pursuant to recommendation made by the Commissioners and in accordance with and subject to provisions in motions filed by plaintiff in this Court, that judgments should now be entered on the award of the Commissioners based on agricultural and forestry values and the actions thus brought to a conclusion.

WHEREFORE, plaintiff says that the petition for referring the actions again to Commissioners and for the taking of further testimony should be denied, and that plaintiff's

motions hereinabove mentioned for entry of judgment on the Commission's findings as therein set out consistent with the mandate of the Supreme Court of the United States be granted.

(S.) JOSEPH E. HINES
United States Attorney
(S.) ROBERT A. CLAY
Assistant United States Attorney

P. O. ADDRESS:
Greenville, South Carolina

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF SOUTH CAROLINA GREENWOOD DIVISION

CIVIL ACTIONS NOS. 786, 1033 AND 1073

UNITED STATES OF AMERICA, PLAINTIFF

vs.

TWIN CITY POWER COMPANY, ET AL., DEFENDANTS

CERTIFICATE OF SERVICE

I certify that copy of this response to petition for reopening and rereferral to Commissioners was duly mailed to Mr. David W. Robinson of Robinson, McFadden and Dreher, 908 Palmetto Building, Columbia 1, South Carolina, attorney for defendants, Twin City Power Company, this the 3rd day of May, 1956.

(S.) JOSEPH E. HINES,
United States Attorney.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA GREENWOOD DIVISION

C/A No. 786
Tract No. C-215

UNITED STATES OF AMERICA

vs.

3,829.09 ACRES OF LAND, MORE OR LESS, IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.,

C/A No. 1033
Tract Nos. F-500 and H-700

UNITED STATES OF AMERICA

vs.

3,906.24 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.,

C/A No. 1073
Tract Nos. H-732 and F-541 (part)

UNITED STATES OF AMERICA

vs.

5,231.66 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.,

RESPONSE OF TWIN CITY POWER COMPANY TO THE GOVERNMENT'S MOTION FOR ENTRY OF JUDGMENT

The Twin City Power Company would respectfully show to this Court:

That the decree of this Court of August 27, 1953 determining that the just compensation due the Twin City Power Company should include a consideration of the use of its property with the waters of the Savannah River (114 F. Supp. 719) was affirmed by the Court of Appeals for the Fourth Circuit (215 F.2d 592) but was thereafter reversed

by the United States Supreme Court (*United States* vs. *Twin City Power Company,* 100 L.Ed. 233). In this opinion the Supreme Court held that the portion of the market value of the property attributable to water power value should not be paid by the United States.

There is in the record in this case made before the Commissioners some evidence of the agricultural or wild forest land value of this property, and the Commissioners made a finding of their opinion of this value, which finding by the Commissioners has never been considered by this Court. Objections to this finding were filed by Twin City Power Company, and these objections have not yet been disposed of.

There is, however, in the record no evidence of the value of this property for industrial uses. Twin City Power Company desires to present such evidence for the consideration of the Court under the doctrine that all potential uses should receive consideration on the issue of just compensation. This testimony was not presented earlier because it represents a value of the property less than its value for water power purposes, which at the time of the taking of the testimony was considered an appropriate consideration of the Court.

For these reasons the Twin City Power Company submits that the cause should be reopened for the purpose of receiving such testimony before the Court makes a new decree on the issue of just compensation.

Respectfully submitted,

DAVID W. ROBINSON,
Counsel for Twin City Power Company.

MAY 7, 1956.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA GREENWOOD DIVISION

CIVIL ACTIONS NOS. 786, 1033 AND 1073

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

TWIN CITY POWER COMPANY, ET AL., DEFENDANTS.

CERTIFICATE OF SERVICE

I certify that a copy of this response of Twin City Power Company to the Government's motion for entry of judgment was duly mailed to Mr. Joseph E. Hines, United States Attorney, Western District of South Carolina, P. O. Box 359, Greenville, South Carolina, attorney for plaintiff, United States of America, this 7th day of May, 1956.

DAVID W. ROBINSON,
Counsel for Twin City Power Company.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA GREENWOOD DIVISION

C/A No. 786

UNITED STATES OF AMERICA

vs.

3,829.09 ACRES OF LAND, MORE OR LESS, IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

C/A No. 1033

UNITED STATES OF AMERICA

vs.

3,906.24 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

C/A No. 1073

UNITED STATES OF AMERICA

vs.

5,231.66 ACRES OF LAND, MORE OR LESS, SITUATED IN McCORMICK COUNTY, SOUTH CAROLINA, AND ANNIE PEARL ROBERTSON, ET AL.

ORDER

When these condemnation proceedings were before this Court on Objections filed by both parties to the Report of the Commissioners of May 14, 1953, the question of the value of the Twin City property for agricultural purposes was not reached since it was my view that the highest and best use for the properties was in connection with the waters of the Savannah River for hydro electric purposes. This use was so probable at the time of taking that it necessarily affected market value and my award was based on this

potential use. *United States* v. *Twin City,* 114 F.Supp. 719. After affirmance by the Court of Appeals (213 F.2d. 592) the United States Supreme Court reversed, holding that the portion of the market value attributable to the proximity of the land to the navigable Savannah was not to be included in the just compensation due the landowner when the United States condemns. *United States* v. *Twin City Power Co.,* 350 U. S. 222.

The companion condemnation proceedings involving the Georgia land followed a similar course. *United States* v. *Twin City Power Company of Georgia,* 221 F.(2d) 299; 350 U.S. 956.

On remand motions to reopen and to receive additional testimony were filed by the two Twin City corporations, respectively, and Judge Scarlett, of the Southern District of Georgia, and I sat together to hear the matter on these motions and on the objections heretofore filed in each Court to the Report. At the hearing Twin City withdrew its motions to re-refer the cause to Commissioners, but pressed its objections to the Report. The United States abandoned its objections to the Report and moved to confirm the findings of agricultural value contained in the Report.

The controlling principle in reviewing Commissioners' findings and recommendations is thus stated in *United States* v. *Waymire* (1953), 202 F.2d. 550, 553:

> Under the plain language of Rule 53, it is the duty of the court to accept the findings of fact made by a master unless they are clearly erroneous. But the findings of a master may be modified in part, or rejected in toto, if they are clearly erroneous. In like manner, under the equally clear language of Rule 71A(h), the findings and awards of a commission shall be accepted unless they are clearly erroneous. But they may be modified in part, or rejected in toto, if they are clearly erroneous. And even though there is evidence to sustain findings of a master or a commission, as the case may be, they are clearly erroneous if the reviewing court on the entire evidence had the definite and firm conviction that a mistake has been committed.

United States v. *U. S. Gypsum Co.*, 333 U.S. 364, 395; *Beckley* v. *Boone* (4 Cir.), 115 F.2d. 513, 515-516.

With this principle as a guide, I have carefully reviewed all of the evidence on agricultural value to determine on the entire record whether the Commissioners' findings are clearly erroneous and if so, what is the proper award to be made for each of the tracts involved.

Twin City offered two experienced land appraisers. One, W. N. Henderson of Ninety-Six, in Greenwood County, South Carolina, is a Clemson College graduate with 14 years of experience as a Federal Land Bank appraiser and 4 years with FHA. The other, Benjamin R. T. Todd, was educated at Clemson and at the Naval Academy. He had long years of experience as Senior Appraiser with the Federal Land Bank in Columbia. Each has appraised many tracts of land in the area of the Clark Hill reservoir. Both of these witnesses, as well as the witnesses for the United States, have testified before me in other condemnation cases.

Mr. Henderson, after detailed study of the several tracts being considered, determined that the principal agricultural uses of these lands were for pasturage to feed cattle, which at the time of taking was an important and growing use of lands in this area, and for the growing of pine. Some 300 acres of bottom land were also useful for row crops. All of the witnesses for both sides agreed that raising cattle and pine had become the chief use of lands in this area, though row crops were still planted in the bottoms.

Mr. Henderson concluded that, aside from the value of timber and pulp wood on these tracts, the 300 acres of bottom land was worth $100.00 per acre and the other 1300 acres had a value of $85.00 per acre. In reaching these conclusions, Mr. Henderson took into consideration the amount it would take to put land into pasturage condition, the yield from tree farming, the price of timber and pulp wood, the demand for such lands. He valued the timber on the properties at $17,000.00 and the strip of land used for a railroad (5.80 acres) at $1500.00. His total valuation for Twin City's South Carolina properties was $159,425.00.

Mr. Todd's valuation at $100.00 per acre aggregated $161,080.00.

The United States offered as its timber appraiser Clark Honnold, who made a detailed study of each tract and concluded that the total value of the standing timber and pulp wood aggregated $13,338.00. The Commissioners accepted this valuation in preference to the somewhat higher figure given by Mr. Henderson. Apparently the chief difference between the witnesses was due to price rather than to the amount of timber. I cannot say that the Honnold appraisal is clearly erroneous. Therefore the findings of timber value are confirmed.

The United States presented as its chief land witness Spencer Cooley, who was employed by it as a full time appraiser from 1946 until 1951. Never having previously appraised or sold land in this area, Mr. Cooley adopted a "comparable sales" method for his testimony here. From the Clerk's office in McCormick County, South Carolina, in which county the Twin City lands are located, he listed some 400 transfers of rural lands between 1945 and 1950, which he listed as "Comparable Sales." From this list of 400 he selected seven for use in comparison with the Twin City properties in South Carolina. Of these seven, five were of sales in 1948 or prior thereto, two in 1949 and none in 1950 or 1951. Yet the Twin City lands were condemned in December, 1949, and July, 1950. Mr. Cooley admits that it was almost impossible to buy land in McCormick in 1950 and concedes that to buy land in that County at the time of taking one would have to pay a much higher price than his appraisals. Again of the seven "comparable sales" Mr. Cooley includes five which were in the reservoir area and sales which were made after the development of Clark Hill was announced. These would not be market value sales because no farmer would buy knowing that the United States would flood the land within a year or two. For these reasons I find little of probative value in Mr. Cooley's testimony.

The Commissioners in their finding followed the appraisal of James M. Cox who testified for the Government. Mr.

Cox is a furniture dealer, a cattle raiser and a sawmill operator. He had no experience in handling real estate for others and little for himself. Instead of testifying as to market value he appraised so as to allow for "making a sawmill man's profit on it." The testimony does not show how much below market value this is. He was unwilling to state the land's worth for pasture though he stated that one of its best uses was for raising cattle. His is not the type of testimony on which an award should be based when there is in the record so much more reliable evidence.

Another Government witness, the Augusta broker Gould Barrett, had never inspected the Twin City lands, had not sold any lands in McCormick County in the five years before his testimony in his case, and was unfamiliar with timber prices. These witnesses for the United States placed a per acre value on the Twin City lands of between $15.00 and $25.00 per acre. The Commissioners, adopting the testimony of James M. Cox on land and Clark Honnold on timber, added a value of $5.00 per acre for assembling and arrived at a total value of about $60,000.00 as compared with the Henderson and Todd appraisals of about $160,000.00.

The findings of the Commissioners as to the agricultural value of these South Carolina lands based on the Cox appraisal are clearly erroneous as that term is defined hereinabove.

Twin City owned in fee a strip of land some two miles in length running from the C. & W. C. Ry. near Modoc to its dam site at Price's Island. A railroad was built on this 30′ strip of land. Most of the strip, totalling 5.80 acres, was taken by the United States. The Commissioners awarded nothing, though concededly it was owned in fee. The testimony of Mr. Henderson is that it was worth $1500.00. While such a strip is difficult to appraise since no farmer would sell a strip through his property except at an exorbitant price, it has limited use for the owner. However, the Report is clearly erroneous in not fixing some value for this.

The Commissioners found that Twin City had assembled into one ownership this large block of land, and added $5.00

per acre for the increase in value attributable to this assembling. Neither side has objected to this holding and it is therefore adopted by the Court.

Twin City also urges for consideration on the issue of value the fact that in arriving at a total market value for the Twin City lands in South Carolina and Georgia the Commissioner accepted the testimony of William Creager that the market value of the property was $1,600,000.00, but in fixing the total award deducted therefrom $343,000.00 as the amount which Twin City would have been required to pay for 745 acres of land over which it held "expired options" and which the witness Creager assumed Twin City had the right to flood. The Commissioners used a hold-up price of $460.00 per acre for this land, which was arrived at by using an actual agricultural value of $80.00 per acre and multiplying this by a hold-up factor of 5.7.

Twin City by its objection 9(b) asked the District Courts to raise the total award of $1,257,000.00 because the deduction of $343,000.00 was based on an agricultural value of $80.00 per acre and elsewhere the Commissioners had fixed an agricultural value of approximately $30.00 per acre. The United States successfully opposed this increase in valuation and the two District Courts affirmed the award of $1,257,000.00. (See Opinion, 114 F. Supp. 724). Since the 745 acres valued by this computation at an agricultural value of $80.00 by the Commissioners and the District Courts is immediately contiguous to and of the same character as the fee lands now before the Court, Twin City argues that my decree of August 26, 1953 is an adjudication that the agricultural value of this land is $80.00 per acre.

While this argument is plausible, I am not prepared to agree that this refusal to raise the award of the Commissioners constitutes an adjudication of the agricultural value. However this points to a major inconsistency in the Commissioners' report. If the agricultural value is $80.00 per acre when a deduction from power value is under consideration, it is difficult to rationalize a value of $30.00 when agricultural value is the yardstick of just compensation. This inconsistency confirms my view that the Report is clearly

erroneous in its determination of land values as distinguished from timber values. It therefore becomes my duty on consideration of the entire record to fix the just compensation for each of these tracts without giving any consideration to that part of their market value attributable to the proximity of these lands to the Savannah River.

These then are the contentions of the parties as modified by my confirmation of the Honnold timber appraisals and the added value for assembling the property:

CONTENTION OF THE UNITED STATES

(Based on the Commissioners' Report)

Civil Action No. 786. Declaration of Taking Filed June 23, 1947.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
C-215	5.80	$ None	$ None	$ No value
Assemblying value @ $5.00 per acre				29.00
Total value				$ 29.00

Civil Action No. 1033. Declaration of Taking Filed December 21, 1949.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
F-500	1,033.00	$24,744.80	$ 8,184.80	$32,929.60
H-700	497.00	12,799.00	4,847.00	17,646.00
				$50,575.60
Value of assembling @ $5.00 per acre				7,650.00
Total value				$58,225.60

Civil Action No. 1073. Declaration of Taking Filed July 5, 1950.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
H-732	70.00	$ 1,257.00	$ 107.00	$ 1,364.00
F-541 (part)	5.00	100.00	200.00	300.00
				$ 1,664.00
Value of assembling @ $5.00 per acre				375.00
Total value				$ 2,039.00

CONTENTION OF TWIN CITY

(Based on Henderson Testimony with Honnold Timber)

Civil Action No. 786.

Tract No.	Acreage		Henderson Land Appraisal with Honnold Timber Appraisal
C-215	5.80		$ 1,500.00

Civil Action No. 1033.

Tract No.	Acreage		
F-500	1,033	175 acres @ 100	$ 17,500.00
		858 acres @ 85	72,930.00
		Timber	8,184.00
		Value of assembling @ $5.00 per acre	5,165.00
		Total	$103,779.00
H-700	497	100 acres @ $100	$ 10,000.00
		397 acres @ 85	33,745.00
		Timber	4,847.00
		Value of assembling @ $5.00 per acre	2,485.00
		Total	$ 51,077.00

Civil Action No. 1073.

Tract No.	Acreage		Henderson Land Appraisal with Honnold Timber Appraisal
H-732	70	25 acres @ 100	$ 2,500.00
		45 acres @ 85	3,825.00
		Timber	107.00
		Value of assembling @ $5.00 per acre	350.00
		Total	$ 6,782.00
F-541	5	@ 85	$ 425.00
		Timber	200.00
		Value of assembling @ $5.00 per acre	25.00
		Total	$ 650.00

The most careful appraisal of the land as distinguished from the growing timber was by the witness Henderson. His experience as an appraiser lends weight to his valuation. The Commissioners described him as a competent land evaluator. My observation of him as a witness in other condemnation cases leads me to the same conclusion. After a study of all of the evidence it is my view that his testimony is entitled to more weight than that of the witnesses for the United States. However, I have concluded that in fixing just compensation the evidence of the Government witnesses should be given some weight and therefore in establishing

the awards for the several tracts I have reduced the Henderson appraisals.

The just compensation to which the landowner is entitled for the several tracts is as follows:

C/A 786	Tract C-215	5.80 acres		$ 1,200.00
C/A 1033	Tract F-500	1,033 acres	$83,119.00	
	Tract H-700	497 "	41,137.00	
				$124,256.00
C/A 1073	Tract H-732	70 "	$ 5,382.00	
	Tract F-541	5 "	550.00	
				$ 5,932.00

It is therefore Ordered that judgments be entered in Civil Actions 786, 1033 and 1073 in accord with this order with interest from the respective dates of taking, subject to credit for such sums as have heretofore been paid into court.

C. C. WYCHE,
United States District Judge
for the Western District of
South Carolina.

NOVEMBER 1, 1956.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA GREENWOOD DIVISION

Civil Action No. 786

Tract No. C-215

UNITED STATES OF AMERICA

v.

3,829.09 ACRES OF LAND, MORE OR LESS, IN MCCORMICK COUNTY, SOUTH CAROLINA, ET AL.

JUDGMENT

This case involves one of five tracts taken by the United States of America from the Twin City Power Company under the power of eminent domain and an Order in said tracts was filed November 2, 1956, holding that the Commission Report was clearly erroneous. This Judgment is being entered pursuant to said Order.

It appears to the Court that the United States of America had the right to condemn the property described in the Declaration of Taking filed herein for public use, containing 5.80 acres of land, owned by Twin City Power Company.

It further appears that the Declaration of Taking for this tract was filed June 23, 1947, and that the title to said tract vested in the United States of America upon said filing.

IT IS NOW ORDERED AND ADJUDGED that title to the above tract described in the Declaration of Taking filed herein is now vested absolutely in the United States of America.

That just compensation for the taking of Tract No. C-215, including all claims and damages of whatever nature arising out of the taking of said tract, is the sum of Twelve Hundred and No/100 ($1200.00) Dollars, with interest at 6% per annum from the date of filing the Declaration of Taking, namely, June 23, 1947.

It further appears that no deposit of estimated compensation was made with regard to the above tract.

It further appears from petitions previously filed in this Court that by agreement of the 18th day of August, 1954, the National Bank of Cohoes, New York, was substituted as Trustee under the original mortgage given by Twin City Power Company to the Merchants Trust Company, which substitution has been recorded in the Office of the Clerk of Court for McCormick County, S. C., in Mortgage Book 20 at Page 533.

IT IS FURTHER ORDERED that upon deposit by the United States of America of the sum of Twelve Hunderd and No/100 ($1200.00) Dollars, with interest on same at the rate of 6% per annum from June 23, 1947, the Clerk of Court shall issue a Registry Fund Check payable to the National Bank of Cohoes, New York, as Mortgage Trustee, and David W. Robinson, Attorney, in the sum of Twelve Hundred and No/100 ($1200.00) Dollars with interest on same at the rate of 6% per annum from June 23, 1947.

(S.) C. C. WYCHE,
United States District Judge.

SPARTANBURG, S. C.
DECEMBER 28, 1956

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, GREENWOOD DIVISION

Civil Action No. 1033 Tract No. F-500

UNITED STATES OF AMERICA

v.

3,906.24 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

JUDGMENT

This case involves one of five tracts taken by the United States of America from the Twin City Power Company under the power of eminent domain and an Order in said tracts was filed November 2, 1956, holding that the Commission Report was clearly erroneous. This Judgment is being entered pursuant to said Order.

It appears to the Court that the United States of America had the right to condemn the property described in the Declaration of Taking filed herein for public use, containing One Thousand and Thirty-three (1033) acres of land, owned by Twin City Power Company.

It further appears that the Declaration of Taking for this tract was filed December 21, 1949, and that the title to said tract vested in the United States of America upon said filing.

IT IS NOW ORDERED AND ADJUDGED that title to the above tract described in the Declaration of Taking filed herein is now vested absolutely in the United States of America.

That just compensation for the taking of Tract No. F-500, including all claims and damages of whatever nature arising out of the taking of said tract, is the sum of Eighty-Three Thousand One Hundred Nineteen and No/100 ($83,119.00) Dollars, with interest on the deficiency of Fifty-Eight Thousand Three Hundred Seventy-four and 20/100

($58,374.20) Dollars at 6% per annum from the date of filing the Declaration of Taking, namely, December 21, 1949.

It further appears to the Court that the sums previously deposited have all been disbursed with interest.

It further appears from petitions previously filed in this Court that by agreement of the 18th of August, 1954, the National Bank of Cohoes, New York, was substituted as Trustee under the original mortgage given by Twin City Power Company to the Merchants Trust Company, which substitution has been recorded in the Office of the Clerk of Court for McCormick County, S. C., in Mortgage Book 20 at Page 533.

IT IS FURTHER ORDERED that upon deposit by the United States of America of the sum of Fifty-Eight Thousand Three Hundred Seventy-Four and 20/100 ($58,374.20) Dollars with interest on same at 6% per annum from December 21, 1949, representing the deficiency herein, the Clerk of Court shall issue a Registry Fund Check payable to the National Bank of Cohoes, New York, as Mortgage Trustee, and David W. Robinson, Attorney, in the sum of Fifty-Eight Thousand Three Hundred Seventy-Four and 20/100 ($58,374.20) Dollars with interest at 6% per annum from December 21, 1949.

(S.) C. C. WYCHE,
United States District Judge.

SPARTANBURG, S. C.
DEC. 28, 1956

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, GREENWOOD DIVISION

CIVIL ACTION No. 1033. TRACT No. H-700

UNITED STATES OF AMERICA

v.

3,906.24 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, et al.

JUDGMENT

This case involves one of five tracts taken by the United States of America from the Twin City Power Company under the power of eminent domain and an Order in said tracts was filed November 2, 1956, holding that the Commisssion Report was clearly erroneous. This Judgment is being entered pursuant to said Order.

It appears to the Court that the United States of America had the right to condemn the property described in the Declaration of Taking filed herein for public use, containing 497 acres of land, owned by Twin City Power Company.

It further appears that the Declaration of Taking for this tract was filed December 21, 1949, and that the title to said tract vested in the United States of America upon said filing.

IT IS NOW ORDERED AND ADJUDGED that title to the above tract described in the Declaration of Taking filed herein is now vested absolutely in the United States of America.

That just compensation for the taking of Tract No. H-700, including all claims and damages of whatever nature arising out of the taking of said tract, is the sum of Forty-One Thousand One Hundred Thirty-Seven and No/100 (41,137.00) Dollars, with interest on the deficiency of Twenty-Eight Thousand Three Hundred Thirty-Eight and

No/100 ($28,338.00) Dollars at 6% per annum from the date of filing the Declaration of Taking, namely, December 21, 1949.

It further appears to the Court that the sums previously deposited have all been disbursed with interest.

It further appears from petitions previously filed in this Court that by agreement of the 18th day of August, 1954, the National Bank of Cohoes, New York, was substituted as Trustee under the original mortgage given by Twin City Power Company to the Merchants Trust Company, which substitution has been recorded in the Office of the Clerk of Court for McCormick County, S. C., in Mortgage Book 20 at Page 533.

IT IS FURTHER ORDERED that upon deposit by the United States of America of the sum of Twenty-Eight Thousand Three Hundred Thirty-Eight and No/100 (28,338.00) Dollars with interest on same at 6% per annum from December 21, 1949, representing the deficiency herein, the Clerk of Court shall issue a Registry Fund Check payable to the National Bank of Cohoes, New York, as Mortgage Trustee, and David W. Robinson, Attorney, in the sum of Twenty-Eight Thousand Three Hundred Thirty-Eight and No/100 (28,338.00) Dollars with interest at 6% per annum from December 21, 1949.

(S.) C. C. WYCHE,
United States District Judge.

SPARTANBURG, S. C.
DEC. 28, 1956.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, GREENWOOD DIVISION

CIVIL ACTION No. 1073. TRACT No. F-541 (PART)

UNITED STATES OF AMERICA

v.

5,231.66 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, and ANNIE PEARL ROBERTSON, ET AL.

JUDGMENT

This case involves one of five tracts taken by the United States of America from the Twin City Power Company under the power of eminent domain and an Order in said tracts was filed November 2, 1956, holding that the Commission Report was clearly erroneous. This Judgment is being entered pursuant to said Order.

It appears to the Court that the United States of America had the right to condemn the property described in the Declaration of Taking filed herein for public use, containing 5 acres of land, owned by Twin City Power Company.

It further appears that the Declaration of Taking for this tract was filed July 5, 1950, and that the title to said tract vested in the United States of America upon said filing.

IT IS NOW ORDERED AND ADJUDGED that title to the above tract described in the Declaration of Taking filed herein is now vested absolutely in the United States of America.

That just compensation for the taking of Tract No. F-541 (part), including all claims and damages of whatever nature arising out of the taking of said tract, is the sum of Five Hundred Fifty and No/100 ($550.00) Dollars, with interest on the deficiency of Four Hundred Fifty and No/100

($450.00) Dollars at 6% per annum from the date of filing the Declaration of Taking, namely, July 5, 1950.

It further appears to the Court that the sums previously deposited have all been disbursed with interest.

It further appears from petitions previously filed in this Court that by agreement of the 18th day of August, 1954, the National Bank of Cohoes, New York, was substituted as Trustee under the original mortgage given by Twin City Power Company to the Merchants Trust Company, which substitution has been recorded in the Office of the Clerk of Court for McCormick County, S. C., in Mortgage Book 20 at Page 533.

IT IS FURTHER ORDERED that upon deposit by the United States of America of the sum of Four Hundred Fifty and No/100 ($450.00) Dollars with interest on same at 6% per annum from July 5, 1950, representing the deficiency herein, the Clerk of Court shall issue a Registry Fund Check payable to the National Bank of Cohoes, New York, as Mortgage Trustee, and David W. Robinson, Attorney, in the sum of Four Hundred Fifty and No/100 ($450.00) Dollars with interest at 6% per annum from July 5, 1950.

(S.) C. C. WYCHE,
United States District Judge.

SPARTANBURG, S. C.
DEC. 28, 1956.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, GREENWOOD DIVISION

CIVIL ACTION No. 1073. TRACT No. H-732

UNITED STATES OF AMERICA

v.

5,231.66 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, AND ANNIE PEARL ROBERTSON, ET AL.

JUDGMENT

This case involves one of five tracts taken by the United States of America from the Twin City Power Company under the power of eminent domain and an Order in said tracts was filed November 2, 1956, holding that the Commission Report was clearly erroneous. This Judgment is being entered pursuant to said Order.

It appears to the Court that the United States of America had the right to condemn the property described in the Declaration of Taking filed herein for public use, containing 70 acres of land, owned by Twin City Power Company.

It further appears that the Declaration of Taking for this tract was filed July 5, 1950, and that the title to said tract vested in the United States of America upon said filing.

IT IS NOW ORDERED AND ADJUDGED that title to the above tract described in the Declaration of Taking filed herein is now vested absolutely in the United States of America.

That just compensation for the taking of Tract No. H-732, including all claims and damages of whatever nature arising out of the taking of said tract, is the sum of Five Thousand Three Hundred Eighty-Two and No/100 ($5,382) Dollars, with interest on the deficiency of Four Thousand One Hundred Twenty-Five and No/100

($4,125.00) Dollars at 6% per annum from the date of filing the Declaration of Taking, namely, July 5, 1950.

It further appears to the Court that the sums previously deposited have all been disbursed with interest.

It further appears from petitions previously filed in this Court that by agreement of the 18th day of August, 1954, the National Bank of Cohoes, New York, was substituted as Trustee under the original mortgage given by Twin City Power Company to the Merchants Trust Company, which substitution has been recorded in the Office of the Clerk of Court for McCormick County, S. C., in Mortgage Book 20 at Page 533.

IT IS FURTHER ORDERED that upon deposit by the United States of America of the sum of Four Thousand One Hundred Twenty-Five and No./100 ($4,125.00) Dollars with interest on same at 6% per annum from July 5, 1950, representing the deficiency herein, the Clerk of Court shall issue a Registry Fund Check payable to the National Bank of Cohoes, New York, as Mortgage Trustee, and David W. Robinson, Attorney, in the sum of Four Thousand One Hundred Twenty-Five and No/100 ($4,125.00) Dollars with interest at 6% per annum from July 5, 1950.

(S.) C. C. WYCHE,
United States District Judge.

SPARTANBURG, S. C.
DEC. 28, 1956.

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No. 785

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PETITIONER

v.

TWIN CITY POWER COMPANY AND WILLIAM P. DAUGHTY, ITS MORTGAGEE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

TWIN CITY POWER COMPANY AND WILLIAM P. DAUCHY, ITS MORTGAGEE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on July 15, 1957.

OPINIONS BELOW

The district court did not write an opinion. Its views are set forth in its order dated November 1, 1956 (R. 226–234).[1] The opinion of the court of appeals and its further opinion denying rehearing (Appendix, *infra*, pp. 20–33) are reported at 248 F. 2d 108.

[1] "R." references are to the Appendix for the United States filed in the court below. References to the appendix to this petition are shown as "(Appendix, *infra*, p. —)."

JURISDICTION

The judgment of the court of appeals (Appendix, *infra*, pp. 33–34) was entered on July 15, 1957. A timely petition for rehearing was denied on September 18, 1957. By order of the Chief Justice, dated December 12, 1957, the time for filing a petition for a writ of certiorari was extended to and including February 15, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether findings of value made by commissioners appointed under Rule 71A (h), Fed. Rules Civ. Proc., may be rejected by a district court, which did not see or hear the witnesses or receive further evidence, purely on the basis of a differing estimate of the weight to be accorded to the conflicting testimony of the witnesses.

2. Whether the court of appeals misapprehended its reviewing function when it applied the "clearly erroneous" test to the district court's valuation rather than to the commissioners' valuation.

3. Whether the United States may be required to pay agricultural or timber value for the destruction of a flowage easement.

FEDERAL RULES INVOLVED

Rule 71A (h), Fed. Rules Civ. Proc., provides as follows:

> *Trial.*—If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensa-

tion shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court.

Rule 53 (e) (2), Fed. Rules Civ. Proc., provides as follows:

> *In Non-Jury Actions.*—In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify

it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

STATEMENT

This is a sequel to *United States* v. *Twin City Power Co.*, No. 463, October Term 1954, in which this Court granted certiorari (348 U. S. 910) and reversed a judgment awarding just compensation for the taking of certain property (350 U. S. 222, rehearing denied, 350 U. S. 1009). The essential facts may be summarized as follows:

Pursuant to the Act of December 22, 1944, 58 Stat. 887, 894, the United States condemned certain lands owned by the Twin City Power Company, and its wholly owned subsidiary, Twin City Power Company of Georgia, for the construction of the Clark Hill Reservoir on the Savannah River in South Carolina and Georgia.

In South Carolina, Twin City owned the fee to 1,610.80 acres and claimed flowage easements over 156.5 acres; and in Georgia, through its subsidiary, Twin City owned the fee to 2,908.35 acres and claimed flowage easements over 32 acres (R. 199). The fee-owned lands were condemned as part of the site for the Clark Hill Reservoir by three suits filed in the United States District Court for the Western District of South Carolina and by three other suits instituted in the United States District Court for the Southern District of Georgia. As to the flowage easements, Twin City asserted claims based on early deeds, the Government contending that these were insufficient to convey or prove title and that any easements

thereunder had been abandoned (R. 197–198). Declarations of taking were filed covering the fee-owned lands, and the lands are now under water.

The lands lay on either side of the Savannah River and extended 11 miles upstream from Price's Island (R. 193). They were acquired between 1901 and 1910 as a site for the reservoir of a dam which Twin City hoped to build at Price's Island. A dam was not built and, until inundated by the United States, the lands were vacant and unimproved. Twin City and owners of other lands condemned for the project filed answers claiming the lands were highly valuable as reservoir sites for dams on the Savannah River. The United States, relying on *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53, 75–76, moved to strike these claims on the ground that the owner of property located on a navigable stream could not claim water power or power site value when the United States, in the exercise of the commerce power, undertook to control the stream. Both district courts (sitting together) denied the motions to strike. *United States* v. *1532.63 Acres of Land, etc.*, 86 F. Supp. 467.

Thereafter, the South Carolina district court appointed commissioners, pursuant to Rule 71A (h), Fed. Rules Civ. Proc., to try the issue of compensation. The Georgia district court appointed the same commissioners to fix the value of the Georgia lands of Twin City's subsidiary.

On May 14, 1953, the commissioners filed their report (R. 190–208), in which, considering "water power value," they awarded $471,904.45 for the South Carolina lands. Pursuant to the request of counsel for

the parties (R. 204), the commissioners also found that as agricultural or wild forest lands the Twin City property in South Carolina was worth $60,293.60, or about $37 an acre (R. 207–208). On August 26, 1953, the trial court overruled objections by both parties. It declined to pass on the commissioners' agricultural or wild forest valuation of the lands. *United States* v. *3,928.09 Acres of Land,* 114 F. Supp. 719.

The United States appealed, and the court of appeals affirmed. *United States* v. *Twin City Power Co.,* 215 F. 2d 592. Upon petition by the United States, this Court granted certiorari and reversed the judgment of the court of appeals. *United States* v. *Twin City Power Co.,* 350 U. S. 222, rehearing denied, 350 U. S. 1009.[2]

On remand, Twin City first moved the district court to reopen the cases for additional testimony (R. 218), but later withdrew such motion and, without alleging errors of law, urged that the court increase substantially the awards based on agricultural or wild forest land value. The district court did so. By

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[2] Litigation involving lands on the Georgia side of the Savannah River, owned by Twin City's wholly owned subsidiary, Twin City Power Company of Georgia, followed the same course. In the three condemnation proceedings involving Georgia lands, the United States District Court for the Southern District of Georgia adopted the opinion of the United States District Court for the Western District of South Carolina, reported as *United States* v. *1532.63 Acres of Land, etc.,* 86 F. Supp. 467. The United States Court of Appeals for the Fifth Circuit affirmed (*United States* v. *Twin City Power Co. of Georgia,* 221 F. 2d 299), and its judgment was reversed by this Court. *United States* v. *Twin City Power Co. of Georgia,* 350 U. S. 956, rehearing denied 350 U. S. 1009.

order dated November 1, 1956 (R. 226–234), the court held that the commissioners' findings based on agricultural or forest land value were "clearly erroneous," expressing the opinion that the testimony of a Twin City witness, W. N. Henderson, was "entitled to more weight than that of the witnesses for the United States" (R. 233). Accordingly, it found values which increased the commissioners' awards of roughly $37 an acre for South Carolina lands to approximately $80 per acre (R. 234).[3] The United States appealed, challenging this increase in valuation.[4]

The commissioners had denied Twin City's claim to any award for the tracts over which the commission found Twin City had flowage easements, on the ground that "if water power valuation is not the true basis for determining just compensation, then these flowage acres have no value whatsoever in the hands of Twin City" (R. 206). Respondent appealed from this denial and also reiterated its claim to power value.[5]

On this second round of appeals, the Court of Appeals for the Fourth Circuit affirmed the judgments of the district court in so far as they awarded compensation for the lands as to which the fee simple was

[3] The Georgia district judge, sitting together with the South Carolina district judge, took the same action in relation to the Georgia lands owned by respondent's subsidiary.

[4] A similar appeal from the Georgia judgments was taken to the Court of Appeals for the Fifth Circuit.

[5] Respondent's subsidiary appealed to the Fifth Circuit from the comparable judgment provision entered in the companion case. The appeals to the Fifth Circuit were argued on October 23, 1957, but have not yet been decided.

taken, but reversed the judgments of the district court in so far as they denied compensation with respect to the 156.56 acres over which Twin City claimed flowage easements (Appendix, *infra*, p. 34). In a petition for rehearing, the United States urged (1) that the opinion of the court of appeals was based upon an erroneous assumption of fact, *i. e.*, that the United States had not paid for the fee title to the parcels subject to Twin City's so-called flowage easements; (2) that fairness to the Government required correction of the opinion to eliminate the unfounded charge that, in substance, the United States was seeking to get something for nothing; (3) that the opinion, in holding that the issue before the court of appeals was not whether the commissioners' findings were amply supported, but whether the district court's findings were so supported, was based upon an erroneous concept of appellate review which placed the court of appeals in direct conflict with other circuits; and (4) that the court of appeals had exceeded its jurisdiction in directing the court to enter awards it had no power to make. On September 18, 1957, the petition for rehearing was denied in a *per curiam* opinion which elaborated upon the court's reasons for reversing the disallowance of the flowage easement claim, even though recognizing that the United States had paid agricultural and timber value to the fee owners (Appendix *infra*, pp. 30–33).[6]

[6] The petition for rehearing showed the details whereby the fee owner in one instance sold his 54 acres to the United States for $1,425 and, in another case, the fee owner received, by stipulation in condemnation proceedings, $3,500 for her 184 acres, of which 102 acres were subject to the flowage easement.

REASONS FOR GRANTING THE WRIT

1. Questions of valuation do not admit of mathematically precise answers. Characteristically, expert opinions on property values cover a wide range. In these circumstances, there is particularly sound reason for insisting that deference be given to the ultimate findings reached by the trier of the facts. The "clearly erroneous" test (Rule 53 (e) (2), *supra*, pp. 3–4) requires no less.

Convincing evidence supports the awards made by the commissioners in these cases. Several Government witnesses, it is to be observed, testified to values less than those which the commissioners adopted. The opinions of the appraisers who testified for the Government were rested, *inter alia*, upon the following: (1) evidence of actual purchases and sales of similar properties in the area as testified to from personal experiences (R. 54, 85–87, 89–91, 94–95, 99, 170–171), as well as other sales of similar properties in the vicinity involved (R. 61, 114–126);[7] (2) actual cruises of the timber (R. 48–52, 63–84); and (3) close

[7] While counsel for respondent brought out that the lists of sales compiled by one of the Government witnesses, Spencer R. Cooley, contained sales at higher prices than those concerning which specific testimony had been given on direct examination, it was made clear that Mr. Cooley's list contained many sales included simply to get the trend of the market (*e. g.*, R. 105, 113, 137–138, 142–143, 153, 157), and that sales referred to by counsel for respondent were of improved properties and other properties of considerably higher tyype (*i. e.*, on paved roads, having large quantities of merchantable timber, etc.) than the Twin City lands so that they could not be considered as truly comparable in determining values (*e. g.*, R. 154–157).

familiarity with the lands involved over a period of many years (*e. g.*, R. 52–53, 84, 87, 104–105, 108–110, 161–164).[7]

Respondent was unable to point to any error of law in the commissioners' award for agricultural or forest land value.[8] Its basic position was that the commissioners should not have believed the Government's land appraisers in preference to respondent's. The district court, in substituting its own valuation figure for that adopted by the commissioners (a figure which it more than doubled), relied almost exclusively upon the testimony of one of respondent's witnesses, W. N. Henderson. It had neither seen nor heard any of the appraisers, a circumstance reflected in its comment (R. 233) that it had found Henderson competent "in other condemnation cases." This assessment of weight to be given the testimony of one witness rather than others, *i. e.*, the determination of their credibility, is a matter which this Court and the lower federal courts have consistently declared should be determined

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[7] This sound approach should be contrasted with the nebulous nature of respondent's valuations: (1) no comparable sales—not one transfer of property at the price range testified to could be named by either of the two land value witnesses for respondent (R. 24–25, 28, 42–43); (2) no actual cruises of the timber (R. 20–21, 34–35). Indeed, one of these witnesses admitted that "It would have been impossible for me to arrive at an idea as to what had been on the land * * *" (R. 43). And it should be noted that this witness acknowledged that he allowed a 20 to 25 percent increase for power site value (R. 44), a value ruled out by this Court. *United States* v. *Twin City Power Co.*, 350 U. S. 222.

[8] Respondent's objections to the agricultural and timber valuations are embodied in its objections Nos. 10, 11, 12 and 14 (R. 215–217).

by the trier of fact. The persons who saw the witnesses can better judge the worth of their testimony by observing their demeanor on the witness stand, their tone of voice, which is often revealing, their frankness or evasiveness in responding to critical questions and similar intangibles which are not reflected in the written record. See *e. g., Davis* v. *Schwartz,* 155 U. S. 631; *Anderson* v. *Mt. Clemens Pottery Co.,* 328 U. S. 680, 689; *United States* v. *Yellow Cab Co.,* 338 U. S. 338, 341–342; *In re Slocum,* 22 F. 2d 282, 285 (C. A. 2); *Santa Cruz Oil Corporation* v. *Allbright-Nell Co.,* 115 F. 2d 604, 607 (C. A. 7).

This Court has gone so far as to say that findings based on credibility of witnesses "must be treated as unassailable." *Adamson* v. *Gilliland,* 242 U. S. 350, 353. In *Stephens* v. *United States,* 235 F. 2d 467, 471 (C. A. 5), the court held that a federal condemnation commission "was not bound to accept the valuation of any particular witness." The present doubling of the commissioner's award to reflect Henderson's valuation is, in effect, a holding that here the commission was bound to accept his valuation and reject those of government witnesses. We submit that the Fifth Circuit was right when it said in the *Stephens* case that it could not "reverse merely because the commission found a valuation more closely based upon the testimony of the Government appraisers than upon that of the landowners' witnesses."

Had there been errors of law in the fact-finding process, the appropriate course would have been to recommit the matter to the commissioners with instructions (Rule 53 (e) (2), *supra,* pp. 3–4). Alternatively,

the district court itself might have taken further evidence (*ibid*). We believe that there were no such errors here, and that there was highly persuasive evidence to support the result reached by those who actually tried the valuation issue. In no event, however, is it appropriate for a district judge, in reviewing a report of commissioners, to choose among items of conflicting testimony and to pick a valuation figure solely upon the basis of his reading of a cold record and his own estimate as to the relative credibility of unseen witnesses. This misconception of his function by the district judge raises a question of substantial importance in condemnation cases, especially so since it appears that demands for jury trial in such cases are being denied with increasing frequency in favor of submission to commissioners under Rule 71A (h), (*supra*, pp. 2–3).[10] Moreover, the same principles apply in all non-jury cases in which there is a reference to a master. Rule 53 (e) (2). Finally, we point out that exactly the same issue is raised in the companion case which is *sub judice* in the Fifth Circuit (see notes 4, 5, p. 7, *supra*).

2. The district court's error was compounded by the court of appeals. In considering the Government's

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[10] See *United States* v. *Cunningham*, 246 F. 2d 330, 332–333 (C. A. 4); *United States* v. *Chamberlain Wholesale Grocery Co.*, 226 F. 2d 492, 498 (C. A. 8); *United States* v. *Waymire*, 202 F. 2d 550, 552 (C. A. 10); *United States* v. *Wallace*, 201 F. 2d 65, 66–67 (C. A. 10). Cf. *United States* v. *Bobinski*, 244 F. 2d 299, 301 (C. A. 2). The volume of condemnation cases to be expected is indicated by the fact that there are now pending 2548 cases to condemn a total of 28,796 tracts of land for various federal purposes.

appeal, the court of appeals assumed that it should determine whether the valuation figure reached by the district court, rather than the valuation figure adopted by the commissioners, was clearly erroneous. It stated its concept of its reviewing function as follows (Appendix, *infra*, p. 26): "We review the District Judge, not the commissioners; and under Rule 52 (a) we may not set aside his findings unless they are clearly erroneous."

Whether one applies the "clearly erroneous" test to the commissioners' determination or to the district court's is a question of substance, not one of form. As previously observed, the permissible range of opinion in a valuation case may be broad. It may well be that, in the instant case, neither a finding of $37 per acre or of $80 per acre can be demonstrated to be "clearly erroneous." What the court of appeals has done, in brief, is to give to the determination of the initial reviewer—the district court—the deference which we believe is due the findings of the trier of the facts.

In doing so, the Fourth Circuit is inconsistent with other circuits. Thus, in *Krinsley* v. *United Artists Corp.*, 225 F. 2d 579, 582, and earlier in *Ferroline Corp. v. General Aniline & Film Corp.*, 207 F. 2d 912, 920, the Court of Appeals for the Seventh Circuit stated the rule as follows:

> Findings of fact by a master are binding on the trial court unless clearly erroneous. F. R. Civ. P. 53 (e) (2), 28 U. S. C. A. The threshold question here then is the *same as it was in the court below*—whether as a matter of law,

the master's findings of fact were *clearly erroneous.*

In *Morris Plan Industrial Bank* v. *Henderson,* 131 F. 2d 975, the Court of Appeals for the Second Circuit, considering the same issue, similarly stated (p. 977): "We therefore hold that the question is the same in this court as it was in the district court." Cf. *McAllister* v. *United States,* 348 U. S. 19, 20–21. This conflict of views—one which potentially affects any case in which the initial determinations of fact are made by commissioners or by a master—should be resolved by this Court.

3. This case also presents a substantial question involving the substantive law of condemnation. The court of appeals, disagreeing with both the commissioners and the district court, has decreed compensation for flowage easements on the basis of the agricultural or forestry value of the lands upon which these easements were imposed. This misconceives fundamental principles of real property and condemnation law.

These lands, at the time of taking, were farms or timber lands. The owners were entitled under the Fifth Amendment to be paid the agricultural or timber value of their lands. Recognizing these obligations, the United States paid them, either by voluntary purchase or by stipulation in condemnation proceedings.

Respondent, the commissioners found, owned flowage easements in the lands, that is, the right to use the land of the fee owners by flooding them in connection with a power project, if such were ever con-

structed. The commissioners acted initially upon the assumption that respondent could be awarded compensation for the loss of the possibility of such construction, *i. e.*, power value. On this assumption, they attributed substantial value to the "flowage easements." The commissioners concluded, however, that, if power site value was not allowable (as this Court ultimately held), the flowage easements would have to be excluded in any alternative award to respondent for the lands it owned in fee, stating (R. 206):

> Of course, in computing land valuations, no consideration whatever was given to the so-called "flowage acres." Twin City did not have fee title to these acres, designated as "flowage acres"; and, if water power valuation is not the true basis for determining just compensation, then these flowage acres, have no value whatsoever in the hands of Twin City.[11]

The "flowage acres" were likewise excluded by the district court following this Court's decision in the earlier case.

The novel doctrine that the holder of a mere flowage easement is somehow entitled to payment on the basis of values inhering in the owner of the fee was first announced by the Fourth Circuit following the vacation and remand in *United States* v. *Virginia Electric & Power Co.*, 350 U. S. 956 (a summary reversal

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[11] Compare *United States* v. *West Virginia Power Co.*, 56 F. Supp. 298 (S. D. W. Va.), in which the court, referring to another power Company's flowage rights, stated (p. 303): "The only possible value of the easements owned by it in these lands is their value for waterpower purposes."

based on the authority of this Court's *Twin City* decision). *United States* v. *2979.72 Acres of Land, etc.*, 235 F. 2d 327, 237 F. 2d 165. In the instant case, the court has adhered to this view. Yet, it would seem self-evident that a flowage easement gives no right to grow crops, raise cattle or cultivate trees, and that talk of value for "agricultural and forestry purposes" (Appendix, *infra*, pp. 21, 22, 30, 31, 32) has no pertinence for purposes of valuing such easement.

The court of appeals, to support a substantial award to respondent, has invoked the so-called "unit rule" of valuation. This is the principle that property which has been used as an entity should be so treated in determining the amount the United States must pay for it, disregarding, for that purpose, divisions of ownership such as leases, life tenancies, etc. After that total is determined, it is divided among those entitled to compensation. But an easement separates the use, not just the title. Its value has no relationship to the servient tenement. When taken, compensation for the easement is based upon depreciation that may occur to the dominant tenement, because of loss of the possible use for which it was created. For example, when a right of way is taken, loss, if any, is based upon depreciation because of loss of access, not a per square foot or other figure for the street itself. *Boston Chamber of Commerce* v. *Boston*, 217 U. S. 189, 195, so held:

> But the Constitution does not require a disregard of the mode of ownership—of the state of the title. It does not require a parcel of land to be valued as an unencumbered whole

> when it is not held as an unencumbered whole. It merely requires that an owner of property taken should be paid for what is taken from him. It deals with persons, not with tracts of land. And the question is what has the owner lost, not what has the taker gained.[12]

The opinions below fly in the face of these principles.

The situation may be summarily stated as follows: Respondent's only right in the lands was to flood them for power use and it has no claim to value of the timber or the crops or the value of other uses to which the lands might be put. The fee owners had a complete right to the value of the crops, the timber, or of all other such uses. And the United States, power value being excluded, is required to pay only the value of the land for such uses. Any award to the respondent power company based on agricultural or timber value would either diminish the award to which the fee owner is entitled[13] or would require the United States to pay value for such use twice. Either alternative is unjust. The United States should be required to make substantial compensation for the "right to flood the land" (Appendix, *infra*,

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[12] Put otherwise, "there is no necessary relationship between the total reached by adding the value of an easement in land to the value of the servient tenement, on the one hand, and the value of an unencumbered fee on the other." *Mayor and City Council of Baltimore* v. *United States*, 147 F. 2d 786, 789 (C. A. 4).

[13] Of course, when the United States paid the fee owners the agreed value for other-than-power uses it stepped into their shoes, as against respondent. *United States* v. *Petty Motor Co.*, 327 U. S. 372, 374; *Messer* v. *United States*, 157 F. 2d 793, 795, fn. 5 (C. A. 5).

p. 31) only if that right had substantial value in private hands. Here, it had not.[14]

The Government is engaged in numerous river improvement projects and there will doubtless be many more in the future. Like Twin City, numerous power companies throughout the country have acquired flowage easements near locations which are logical sites for a dam and reservoir. The question therefore is one that is bound to recur. Indeed, apart from the instant case and the *Virginia Electric & Power Co.* case, to which we adverted above, the same issue has already been raised in two cases now pending in the district courts.[15]

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[14] Absent a private right to build a power project upon the navigable stream, it is apparent that there would be no market for respondent's easements conferring the right to flood, and that their value could hardly be more than nominal. Indeed, the commissioners have already found that the flowage acres have no value whatsoever in the hands of Twin City if water power valuation is excluded (R. 206).

[15] *United States* v. *Various Tracts of Land in Columbia and Lincoln Counties, Georgia, Augusta Power Company, claimant, et al.*, Civil Actions Nos. 432, 521 and 523 (S. D. Ga.); *United States* v. *1,030.17 Acres of Land, more or less, situate in Dawson, Forsyth and Hall Counties, State of Georgia, and P. D. Waters, et al.*, Civil Action No. 681 (N. D. Ga. (Tract No. I-970-1-2-E)).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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FEBRUARY 1958.

APPENDIX

In the United States Court of Appeals for the Fourth Circuit

No. 7427

UNITED STATES OF AMERICA, APPELLANT AND CROSS-APPELLEE

v.

TWIN CITY POWER COMPANY, APPELLEE AND CROSS-APPELLANT (TRACT NO. C–215)

No. 7428

UNITED STATES OF AMERICA, APPELLANT AND CROSS-APPELLEE

v.

TWIN CITY POWER COMPANY, APPELLEE AND CROSS-APPELLANT (TRACTS NOS. F–500 AND H–700)

No. 7429

UNITED STATES OF AMERICA, APPELLANT AND CROSS-APPELLEE

v.

TWIN CITY POWER COMPANY, APPELLEE AND CROSS-APPELLANT (TRACTS NOS. F–541 (PART) AND H–732)

CROSS-APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, AT GREENWOOD

(Argued June 13, 1957. Decided July 15, 1957)

Before PARKER, *Chief Judge,* and SOPER and HAYNSWORTH, *Circuit Judges.*

PARKER, *Chief Judge:*

This is the second time that we have had before us these three condemnation cases involving compensation for the taking of lands on the Savannah River. Commissioners appointed by the court below to value the lands filed a report showing that, when considered in connection with their availability for water power purposes, they had a value of $267.02 per acre, or a total value of $471,904.45, but that, as agricultural or wild forest lands, they had a value of approximately $37 per acre, or a total value of $60,293 for the 1,610.8 acres owned by the defendant in fee simple. The District Judge, without passing upon the valuation for agricultural and forestry purposes, approved the valuation based upon their availability for water power purposes (114 F. Supp. 719), and this court affirmed. *United States* v. *Twin City Power Co.,* 4 Cir. 215 F. 2d 592. The Supreme Court granted certiorari and reversed, holding that the availability of the lands for water power purposes might not be considered in valuing them for the purpose of determining just compensation on condemnation by the government. 350 U. S. 222.

On remand, the District Judge, sitting with the District Judge for the Southern District of Georgia, who had jurisdiction with respect to the lands on the Georgia side of the river, reviewed the evidence and the findings of the commissioners as to the value of the lands for agricultural and forestry purposes. He held the findings with respect to these values to be clearly erroneous and found the correct value of the lands, without considering their availability for power development, to be around $80 per acre, or a total of $131,388, for which he entered judgment. He held

that no recovery could be had for flowage easements owned by defendant power company over 156.56 acres of land to which it did not hold fee simple title. The government has appealed from the judgment fixing the value of the lands, contending that the amount thereof is excessive and that the judge transcended his powers in overruling the findings of the commissioners. The power company has appealed from the holding that it was not entitled to any compensation for the taking of the flowage easements which it held.

We think that the District Judge was justified in holding the report of the commissioners as to the valuation of the land for agricultural and forestry purposes to be clearly erroneous and substituting a valuation at which he had arrived after a careful study of the testimony; and weight is added to his action by reason of the fact that the District Judge from Georgia, sitting with him and reviewing the same record, took similar action. The commissioners had made their valuation at a time when it was thought that the highest value of the land was that arising from its availability for water power purposes; and, as this value was far above its value for agricultural and forestry purposes, they gave little attention to the latter, contenting themselves with a brief statement with regard thereto at the end of a lengthy report dealing principally with value for water power purposes. In reporting on value for agricultural and forestry purposes, they adopted the valuation placed upon the land by a witness Cox, a furniture dealer, cattle raiser and saw mill operator, who was not shown to have had any special qualifications for valuing lands in that community, and ignored the testimony of two experienced land bank appraisers who were eminently qualified to appraise them. With

respect to the testimony of these appraisers, the trial judge said:

> Twin City offered two experienced land appraisers. One, W. N. Henderson of Ninety-Six, in Greenwood County, South Carolina, is a Clemson College graduate with 14 years of experience as a Federal Land Bank appraiser and 4 years with FHA. The other, Benjamin R. T. Todd, was educated at Clemson and at the Naval Academy. He had long years of experience as Senior Appraiser with the Federal Land Bank in Columbia. Each has appraised many tracts of land in the area of the Clark Hill reservoir. Both of these witnesses, as well as the witnesses for the United States, have testified before me in other condemnation cases.
>
> Mr. Henderson, after detailed study of the several tracts being considered, determined that the principal agricultural uses of these lands were for pasturage to feed cattle, which at the time of taking was an important and growing use of lands in this area, and for the growing of pine. Some 300 acres of bottom land were also useful for row crops. All of the witnesses for both sides agreed that raising cattle and pine had become the chief use of lands in this area, though row crops were still planted in the bottoms.
>
> Mr. Henderson concluded that, aside from the value of timber and pulp wood on these tracts, the 300 acres of bottom land was worth $100 per acre and the other 1300 acres had a value of $85 per acre. In reaching these conclusions, Mr. Henderson took into consideration the amount it would take to put land into pasturage condition, the yield from tree farming, the price of timber and pulp wood, the demand for such lands. He valued the timber on the properties at $17,000 and the strip of land used for a railroad (5.80 acres) at $1,500. His total valuation for Twin City's South Carolina properties was $159,425.

Mr. Todd's valuation at $100 per acre aggregated $161,080.

The trial judge pointed out that the chief land witness relied upon by the government had never previously sold or appraised land in this community and that, although he made his valuation on the basis of a comparison of sales, he used only seven sales as a basis of comparison, although he had a list of 400 transfers of rural lands in the county, that five of the seven occurred a year or more before the taking and that he admitted that to buy land in the county at the time of the taking one would have had to pay a much higher price than his appraisal. As to the witness Cox, whose valuation was adopted by the commissioners and another witness relied on by the government, the judge said:

> The Commissioners in their finding followed the appraisal of James M. Cox who testified for the Government. Mr. Cox is a furniture dealer, a cattle raiser and a sawmill operator. He had no experience in handling real estate for others and little for himself. Instead of testifying as to market value he appraised so as to allow for "making a sawmill man's profit on it." The testimony does not show how much below market value this is. He was unwilling to state the land's worth for pasture though he stated that one of its best uses was for raising cattle. His is not the type of testimony on which an award should be based when there is in the record so much more reliable evidence.
>
> Another government witness, the Augusta broker Gould Barrett, had never inspected the Twin City lands, had not sold any lands in McCormick County in the five years before his testimony in this case, and was unfamiliar with timber prices. These witnesses for the United States placed a per acre value on the Twin City lands of between $15 and $25 per acre. The

> Commissioners, adopting the testimony of James M. Cox on land and Clark Honnold on timber, added a value of $5 per acre for assembling and arrived at a total value of about $60,000 as compared with the Henderson and Todd appraisals of about $160,000.
>
> The findings of the Commissioners as to the agricultural value of these South Carolina lands based on the Cox appraisal are clearly erroneous as that term is defined hereinabove.

The government argues that because there was substantial testimony supporting the findings of the commissioners and because they saw and heard the witnesses, the trial judge was bound to accept their findings. If this were the law, the right of review vested in the trial judge by Rule 53 would amount to little, for almost always the master or commissioners see and hear the witnesses and seldom do they render a report which can be said to be without substantial support in the evidence. It was the purpose of the rule, where there is a trial without a jury, to place ultimate responsibility for the findings of fact upon the judge. Where there has been a reference to a master, the master's findings are entitled to special weight because he has seen and heard the witnesses but they are not given the effect of a verdict by a jury. The language of the rule is that the court shall accept the master's findings unless clearly erroneous. This is manifestly a guide to be followed in the exercise of the discretion vested in the District Judge, not a limitation upon his power. The rule applicable is well stated by Judge Bratton, speaking for the Court of Appeals of the Tenth Circuit in *United States* v. *Waymire,* 10 Cir. 202 F. 2d 550, 553, as follows:

> Under the plain language of Rule 53, it is the duty of the court to accept the findings of fact made by a master unless they are clearly erroneous. But the findings of a master may be

> modified in part, or rejected in toto, if they are clearly erroneous. In like manner, under the equally clear language of Rule 71A (h), the findings and awards of a commission shall be accepted unless they are clearly erroneous. But they may be modified in part, or rejected in toto, if they are clearly erroneous. And even though there is evidence to sustain findings of a master or a commission, as the case may be, they are clearly erroneous if the reviewing court on the entire evidence has the definite and firm conviction that a mistake has been committed.

We review the District Judge, not the commissioners; and under Rule 52 (a) we may not set aside his findings unless they are clearly erroneous. When he has set aside the findings of a master or commissioners, we must give consideration to the fact that they saw and heard the witnesses and that he did not, and we must pass upon his findings with this in mind; but, unless we can then say that his findings are clearly erroneous when viewed in this light, we must accept them. In the case before us, we cannot say that the findings of the judge were clearly erroneous. On the contrary, we think that he has demonstrated that they rest upon a reasonable basis and that his overruling of the report of the commissioners and adopting a valuation different from theirs should be sustained.*

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* For a condemnation case in which the action of the trial judge was sustained in overruling the findings of commissioners, see *United States* v. *44 Acres of Land*, 2 Cir. 234 F. 2d 410, 414. For a case in which the action of a trial judge was sustained in overruling the findings of a master, see *Krinsley* v. *United Artists Corporation*, 7 Cir. 235 F. 2d 253, 257-260. For cases in which appellate courts have set aside concurrent findings of the master and the trial judge, see *Beckley Bank* v. *Boone*, 4 Cir. 115 F. 2d 513, 515-516; *H. F. Wilcox Oil & Gas Co.* v.

There is no merit in the contention of the government that the judge improperly valued the property by adding the value of the timber to the value of the land. The record shows that the witness Henderson arrived at his valuations of the land as a whole by adding the value of the timber to the value of the land considered without the timber. The judge accepted the valuation of the witness Honnold as to what the timber was worth, which was approximately $4,000 less than the value placed on it by Henderson. He did not, however, add this valuation to Henderson's valuation of the land, but valued the entire property at $131,388, which was more than $9,000 less than the valuation placed by Henderson on the land without the timber. It was, of course, proper for the judge to take the value of the timber into consideration in valuing the property. See *Cade* v. *United States*, 4 Cir. 213 F. 2d 138.

We think that the judge was in error, however, in denying the company compensation with respect to the taking of the flowage easement over the 156.56 acres, as to which the company did not own the fee simple interest. It will not do to say that the flowage easement has no value except for power purposes and that the Supreme Court has ruled that this may not be considered on the question of due compensation. The answer is that the owners of the land are entitled to recover for the taking thereof by the government and that, where the owner of the fee has parted with the flowage easement to another, that other, and not the owner of the fee, is entitled to recover the part of the compensation attributable to the taking of the easement. We dealt with this pre-

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Diffie, 10 Cir. 186 F. 2d 683, 696; *Slattery Company* v. *United States*, 5 Cir. 231 F. 2d 37, 43; *Baltimore Dairy Lunch* v. *United States*, 8 Cir. 231 F. 2d 870.

cise question in our recent decision in *United States* v. *2979.72 Acres of Land in Halifax County, Virginia*, 4 Cir. 235 F. 2d 327, rehearing denied, 237 F. 2d 165, where we said (235 F. 2d at 329–330):

> It is argued that the government should not be required to pay anything to the power company, for the reason that the flowage rights that the power company has acquired are of value only for the purposes of water power development. The answer is that the conveyance of flowage rights by the owner of the land to the power company vested in the latter the interest in the land that is being taken by the government here in the condemnation proceeding and entitles it to compensation for the taking of such interest. See *United States* v. *Welch*, 217 U. S. 333, 30 S. Ct. 527, 54 L. Ed. 787. The proposition that because the government has obtained from the owner of the fee a conveyance for which it has paid only one dollar (evidently accepted because the remaining interest in the land had no value after the conveyance of the easement to the power company), it may acquire by condemnation the right to flood the land without paying anything to the owner of the flowage easement, has nothing to commend it either in logic or in common sense. If Mrs. Williams were the owner of the entire interest in the land, no one would contend that she would not be entitled to compensation for the condemnation of flowage rights by the government. Where these flowage rights have been conveyed to another, there is no reason in law, in equity, in good conscience or in common honesty why the compensation to which she would otherwise have been entitled should not be paid to the one to whom such rights have been conveyed.

In denying the petition for rehearing, we said:

> A petition for rehearing insists that since the flowage easement of the power company

had no value to it except for water power purposes, and since value for such purposes cannot be considered, it is not entitled to any compensation whatever for the destruction of its easement as a result of the government's taking. The answer is that the taking by the government is a proceeding in rem. It must pay as compensation for the taking the amount by which the value of the land is decreased as a result of the taking of the flowage easement; and the owner whose interest is damaged as a result of the taking of that easement is entitled to the compensation. There can be no question but that the power company here had acquired the interest in the land, i. e., the flowage rights, which the government is taking by condemnation, and that compensation for such taking should be made to the power company as the owner of that interest. And there can be no question, furthermore, but that the compensation to be paid is, not the value of that interest to the power company, but the difference in the value of the land with and without the flowage easement, not considering its value for water power purposes. The case is not one of paying compensation to the owner of the land for the imposition of an additional or second easement, but of allocating compensation between the owner of the fee and the owner of a flowage easement which is destroyed as a result of the taking.

No one would contend that the government would not be liable to the owner of fast land which it floods for the difference in the value of the land with and without the flooding, excluding, of course, its value for power development. When a flowage easement has been granted to another, it seems equally clear that the owner of such easement is entitled to the part of the compensation attributable to the destruction of the easement. The compensation to be paid must be meas-

ured, of course, by the value of the land for agricultural and forestry purposes without reference to its value for power purposes; and when this value has been ascertained it must be apportioned between the owner of the fee and the defendant power company, the owner of the easement. If it should appear that the value of the land for agricultural and forestry purposes has been practically destroyed by the grant of the easement, then the power company would be entitled to substantially all of the compensation. If, however, it should appear that the land has value for agricultural and forestry purposes, notwithstanding the grant of the easement, the owner of the fee would be entitled to this, the power company being entitled to the difference between this and what the value would be for agricultural and forestry purposes without the easement. The position that the owner of the fee cannot recover for the flooding because he has parted with the flowage easement and that the owner of the easement cannot recover because he does not own the fee, has nothing to commend it either in law or in reason.

The judgments appealed from will accordingly be affirmed in so far as they award compensation for the lands as to which the fee simple interest of the power company was taken and will be reversed in so far as they deny compensation with respect to the 156.56 acres over which the power company had a flowage easement and the cases will be remanded for further proceedings not inconsistent herewith.

Affirmed in part, reversed in part and remanded.

OPINION ON REHEARING

Per Curiam:

A petition for rehearing calls attention to the fact that the government has paid compensation to the

owners of the fee in lands over which the power company owns a flowage easement. This, however, does not constitute compensation to the power company for the destruction of the easement conveyed to it prior to the taking by the government. While the value of such an easement for water power purposes may not be considered in awarding compensation, there is no reason why the holder thereof should not receive compensation for the interest in the land which it represents. The right to such compensation manifestly cannot be destroyed by acquiring a conveyance from the owner of the fee, who prior thereto had conveyed to the power company the right to flood the land. As we pointed out in our opinion herein:

> No one would contend that the government would not be liable to the owner of fast land which it floods for the difference in the value of the land with and without the flooding, excluding, of course, its value for power development. When a flowage easement has been granted to another, it seems equally clear that the owner of such easement is entitled to the part of the compensation attributable to the destruction of the easement. The compensation to be paid must be measured, of course, by the value of the land for agricultural and forestry purposes without reference to its value for power purposes; and when this value has been ascertained it must be apportioned between the owner of the fee and the defendant power company, the owner of the easement. If it should appear that the value of the land for agricultural and forestry purposes has been practically destroyed by the grant of the easement, then the power company would be entitled to substantially all of the compensation. If, however, it should appear that the land has value for agricultural and forestry purposes, notwithstanding the grant of the easement, the

owner of the fee would be entitled to this, the power company being entitled to the difference between this and what the value would be for agricultural and forestry purposes without the easement.

It is said that the power company has sustained no loss because the only value to it of the right to flood the land was for the development of water power, which may not be considered as an element of value for purposes of compensation. It is elementary, however, that compensation is determined on the basis of market value, not on the basis of the use which the owner is making or may make of it. 18 Am. Jur. p. 877; *Olson* v. *United States,* 292 U. S. 246, 255. Where land is taken the owner or owners must be awarded this value, and where an easement has been conveyed to another by the owner of the fee, the owner of the easement is entitled to share in the award to the extent of the value of the easement, excluding, of course, its value for water power purposes. Settlement with the owner of the fee in such case for his interest in the land cannot foreclose the right of the owner of the easement to compensation. Unquestionably the conveyance of a flowage easement conveys a valuable interest in the land and one which depreciates the value of the interest remaining in the owner of the fee, even though its value for power development may not be considered; and, if the government may acquire the right to flood the land by taking a conveyance of the interest remaining in the fee simple owner after the conveyance of the easement, no amount of sophistry can obscure the fact that it is acquiring for nothing the interest represented by the easement. The Supreme Court has held that compensation need not be made for the element of value represented by availability for water power development. It has not

held that other elements of value may be ignored or that the government may take for nothing an interest in land merely because the land lies along a navigable stream.

The petition for rehearing alleges that a part of the 156.56 acres covered by the company's flowage easement is not being taken by the government in these proceedings; but this is a matter to be considered by the District Court, which will, of course, award compensation only for property taken in the proceedings before it with such damages as are shown to have resulted from the taking. See 18 Am. Jr. p. 905; *United States* v. *Cress*, 243 U. S. 316, 327; *Campbell* v. *United States*, 266 U. S. 368, 371.

Other questions raised by the petition for rehearing have been fully considered but are so lacking in merit as not to warrant further discussion.

Rehearing denied.

JUDGMENT

Filed and Entered July 15, 1957.

In the United States Court of Appeals for the Fourth Circuit

No. 7427

UNITED STATES OF AMERICA, APPELLANT AND CROSS-APPELLEE

v.

TWIN CITY POWER COMPANY, APPELLEE AND CROSS-APPELLANT

(Tract No. C-215)

CROSS-APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA

This cause came on to be heard on the record from the United States District Court for the Western District of South Carolina, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed in so far as it awards compensation for the lands as to which the fee simple interest of the power company was taken and reversed in so far as it denies compensation with respect to the 156.56 acres over which the power company had a flowage easement; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of South Carolina, at Greenwood, for further proceedings not inconsistent with the opinion of the Court filed herein.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

MORRIS A. SOPER,
United States Circuit Judge.

CLEMENT F. HAYNSWORTH, JR.,
United States Circuit Judge.

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JAMES R. KEY, Clerk

No. 785

In the Supreme Court of the United States

October Term, 1957

UNITED STATES OF AMERICA, PETITIONER

v.

TWIN CITY POWER COMPANY AND WILLIAM P. DAUGHY, ITS MANAGER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
[illegible],
Special Assistant to the Attorney General,
[illegible],
Attorneys,
Department of Justice, Washington, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 785

UNITED STATES OF AMERICA, PETITIONER

v.

TWIN CITY POWER COMPANY AND WILLIAM P. DAUCHY, ITS MORTGAGEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY MEMORANDUM FOR THE UNITED STATES

1. The first question presented by the Government's petition in this case is whether the district court failed to apply the "clearly erroneous" standard to the commission's findings of valuation and substituted its own judgment as to the weight to be accorded to the conflicting testimony of the various witnesses who testified as to the value of the properties. Respondent replies that this is just another case in which the losing litigant is displeased with a court's findings, and that it would be onerous for this Court to examine the record.

If the very volume of litigation makes it highly desirable that essentially factual issues should not ordinarily be examined in this Court—a view to which

we certainly subscribe[1]—the same consideration makes it of heightened importance that the lower courts adopt and apply correct standards.

We think it can be readily demonstrated in this case (a) that there was such a substantial body of evidence to support the valuation figure reached by the commission that there can be no doubt of the departure, by the district court, from the "clearly erroneous" standard; and (b) that the district court's substitute valuation (more than double that of the commission's) was based (though the district court saw and heard no witnesses) upon a preference for the testimony of one of the condemnee's experts (" * * * it is my view," said the district judge, "that his testimony is entitled to more weight than that of the witnesses for the United States," R. 233).

Even if it be assumed for the moment that the district court had adequate ground for dissatisfaction with the decision of the commission, we think that it was serious error for the court—which was not, in this case, the initial trier of the facts—to look at the cold record, containing many conflicting estimates as to value, and to select a figure upon the basis of one witness's estimate. Respondent seeks to justify the failure to remand to the commission by the suggestion that the district court was concerned with the "competency" of particular items of testimony and was not

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[1] The Government is a litigant in thousands of cases annually. If its practice were to seek review in this Court in all cases in which it encountered adverse findings, it would, as a matter of course, file many times the number of petitions it files annually

undertaking to pass upon the "credibility" of the expert witnesses (Br., p. 11). Taking this attempted distinction at face value, there is still no denying that numerous witnesses whose expert qualifications were neither questioned by the commission nor by the district court testified to values strikingly divergent from the valuation figure reached by the court, which acted almost entirely on the basis of the estimate of a single Twin City witness. There can be no escape, we submit, from the conclusion that the district court did "pick and choose," as is indeed acutely reflected in its comment that it had found Henderson (the witness upon whom it chose to rely) competent "in other condemnation cases."

To formulate a reasoned value judgment based upon expert testimony necessarily involves—at least when the experts differ, as they almost invariably do—subsidiary judgments as to the credibility of the experts. This case is no exception. We know of no support for the notion that these judgments may be made in the first instance by a reviewing tribunal. If re-evaluation was necessary in this case (which we dispute), it was then certainly necessary that it be made by those in a position to make it:—those who had seen and heard the witnesses and who might hear, if deemed appropriate, additional evidence.

The conviction that persuasive evidence supported the commission's valuation is not confined to the Government's lawyers. In his dissent in the companion

Twin City case,[2] involving review of the parallel decision of the Georgia District Court, Judge Tuttle, reviewing the same record and summarizing the testimony of four witnesses (all of whom were regarded by the commission as qualified, and all of whom testified to a value *less* than that adopted by the *commission*), finds it inconceivable that the decision of the commission could be set aside if the "clearly erroneous" test were actually applied to it. He stated (App., *infra*, pp. 31–32):

> I can sympathize with the majority's refusal to hold that the Commission's findings are clearly erroneous. Such a holding on a record as replete with supporting evidence as this would come back to haunt us in every future case in which a litigant seeks a reversal of the findings of a trial court. In my opinion it would make a meaningless phrase out of the clearly erroneous doctrine. I think on the record which was the basis of the commission's findings, neither the district court nor we could legally hold their valuation clearly erroneous, and that therefore the judgment arrived at by the district court "by creating a formula of compensation based upon a contrary view," to use the language of the Supreme Court in the Mount Clemens Pottery Company case [328 U. S. 680, 689], was wrong and must be reversed. It seems to me clear beyond doubt that viewing this Court as having the duty to ap-

[2] *United States* v. *Twin City Power Company of Georgia*, C. A. 5, No. 16743, decided February 28, 1958. The Government's petition in the instant case was filed prior to that date.

> prove the valuation found by the commission, unless clearly erroneous, we could not conceivably make such a finding on the record before us.[3]

2. The Government's second contention in its petition is that the court of appeals misapprehended its reviewing function and undertook to determine whether the district court's $80-per-acre valuation was "clearly erroneous," instead of deciding whether the commission's $37-per-acre valuation could be deemed "clearly erroneous." This is not merely evident from the fact that the substantial evidence supporting the commission's determination has been largely disregarded. The court of appeals articulated its view of its function in unequivocal terms: "We review the District Judge, not the commissioners; and under Rule 52 (a) we may not set aside his findings unless they are clearly erroneous" (Pet. App., p. 26).

Respondent argues that the court of appeals really did review the commission's findings to determine if they were clearly erroneous, and that it is what the court of appeals "did," not what it said, which counts (Br., p. 17). When a court of appeals is enunciating a standard of review, what it says, we submit, is independently important. It is also more than a fair clue to what it did. And the result reached in this

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[3] To Judge Tuttle's comment, it may be added that none of the eight judges (two district judges and six circuit judges) who have passed upon the instant case and the companion case goes so far as to say that there was not substantial evidence to support the commission's valuation.

case confirms, rather than contradicts, that it did what it said it was doing.

On this same theory—that the court of appeals was merely inapt in its expression—respondent advises this Court that the conflict asserted by the Government is "spurious" and rests upon a "nearly impossible" interpretation of the court of appeals' opinion.

These confident rejoinders are made despite the fact that members of the Fifth Circuit deciding the companion *Twin City* case—both the majority judges and the dissenting judge—declare that there is widespread conflict and confusion, and, indeed, within the Fourth and Fifth Circuits, as to the appropriate scope of court of appeals' review when a district court sets aside the findings of a commission, master, or referee.

Judge Rives, speaking for the Fifth Circuit majority, takes explicit note (App. *infra*, pp. 15–16) of the standard of review enunciated by the Fourth Circuit in the instant case ("We review the District Judge, not the commissioners; and under Rule 52 (a) we may not set aside his findings unless they are clearly erroneous"). He proceeds to refer to cases which state, in contradiction, that the question for review in the appellate court is the same as it was in the district court. Thus, he quotes (App., *infra*, p. 18) the words of a Second Circuit opinion, adopted by Judge Hutcheson in a Fifth Circuit case, that "we have the same duty as the district court to accept the referee's findings, unless they are clearly erroneous." Judge Rives observes further (App., *infra*, p. 17) that "Judge Parker had himself in an earlier case * * * taken

note of the conflict of authority on the question." He describes the problem which arises when a district court rejects some or all of a commission's findings as "really difficult" (App., *infra*, p. 19). And he adds that (App., *infra*, p. 21) "decisions of the state courts are similarly in conflict as to the scope or rule of appellate review when the trial court and the master or referee do not agree."

Judge Tuttle dissented on the express ground that the Fifth Circuit's majority, as well as the Fourth Circuit, has "applied the wrong standard controlling our review of the judgment of the District Court," and that this "error in the standard of appeal adopted by the Fourth Circuit and by this Court is of such importance in the field of condemnation that I am constrained to state the reasons for my disagreement" (App., *infra*, p. 27).[1]

Had respondent set forth the Fifth Circuit's opinions, instead of merely embracing the result which that court reached, it would have been at once obvious to this Court, we believe, that it is "nearly impossible" to escape the conclusion that there is marked diversity of opinion as to the correct standard of review.

3. The third point raised by the Government's petition is the validity of the court of appeals' holding that respondent is entitled to compensation for its so-called "flowage acres" (those acres in relation to

[1] Because of the conflict of views within the Fifth Circuit, the Government has filed a petition for rehearing *en banc* in the companion case involving the Georgia lands.

which respondent had easements, as distinguished from the condemned acres which it owned) on the basis of the agricultural or forest value of those acres.

The commission concluded that the "right to flood" had "no value whatsoever in the hands of Twin City" if one excludes from consideration the factor of potential water power development (R. 206). Exclusion of this factor was subsequently required by this Court's holding (350 U. S. 222) that Twin City could not rest upon an assumed "right" (at least as against the United States) to dam the waters of the navigable Savannah River. Accordingly, the district court, on remand, made no award in relation to the flowage acres.

The court of appeals' contrary ruling erroneously equates values inhering in the fee owners (the value of the lands for agricultural or forest purposes) with the rights of an easement holder.[5] Respondent appears to recognize that the water power factor must be excluded (Br., pp. 23–24), but it, too, asserts that it is entitled to be paid the agricultural or forest value, although the Government has once paid the owners in fee.

To reach this conclusion, respondent first asserts (incorrectly, as we point out in a moment) that its flowage easements gave it the right to flood "*for any purpose whatsoever*" (Br., pp. 21, 24). It then rea-

[5] Respondent's pronouncement that easements have been a recognized form of property right "since Domesday" (Br., p. 20) may well be true, but William the Conqueror can hardly answer the question whether the particular easements here involved have any compensable value as against the United States.

sons that the easements were of value (albeit there is not the faintest suggestion of proof, as the commission recognized, that flooding the acres could serve anyone's economic purpose other than in connection with a water power project) because they conferred a power "to destroy the use of the land for agricultural and forest purposes" (Br., pp. 21–22).

We dispute the notion that compensation could be allowed on the theory that there was a valuable right to engage in purposeless destruction. But there is no occasion to debate this point. The deeds upon which respondent's flowage rights depend show that respondent did not acquire the right to flood "for any purpose whatsoever." Two of the three deeds involved in this condemnation proceeding withheld the granting of the flowage easements therein conveyed "*until the development of this water power is consummated, or in the consummation, then they shall vest in said Twin City Power Company.*"[6] The third deed, though less explicit, is also restrictive in purpose.[7]

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[6] Copies of these deeds are exhibits appended to the petition for rehearing filed by the Government in the court below and appear in the appendix to that petition at pp. 17–19. They are part of the record in this Court.

[7] The third deed recites (Appendix to petition for rehearing, p. 20): "The title to said lands shall remain in me, my heirs and assigns, together with the privileges of using said land in any way not inconsistent with the use thereof by said Twin City Power Company, its successors and assigns." The only legitimate *use* of the power company's "right to flood" the riparian lands involved, as the commission found, would be in connection with the development of water power. The right has never been exercised because Twin City has never built a power project and has long since lost any prospect of receiving a license to do so.

In the Fifth Circuit case, respondent has abandoned the claim that its flowage easements in Georgia have any compensable value (App., *infra*, p. 26). Since respondent cannot sustain its assertion that it had the right to flood the South Carolina acres "for any purpose whatsoever", the logic of its own brief in opposition to certiorari (see pp. 23–24) calls for a confession of error on this aspect of the present case as well.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

RALPH S. SPRITZER,
Assistant to the Solicitor General.

ROGER P. MARQUIS,
HAROLD S. HARRISON,
Attorneys.

MARCH 1958.

APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16743

UNITED STATES OF AMERICA,
Appellant,

versus

TWIN CITY POWER COMPANY OF GEORGIA, ET AL.,
Appellees.

TWIN CITY POWER COMPANY OF GEORGIA,
Appellant,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeals from the United States District Court for the Southern District of Georgia.

(February 28, 1958.)

Before RIVES, TUTTLE and BROWN, Circuit Judges.

RIVES, Circuit Judge: These are appeals from three judgments rejecting the findings and report of a com-

mission appointed under Rule 71 A (h),[1] and determining, by the district court itself, the compensation owed by the United States to the Twin City Power Company of Georgia for 2908.35 acres of land located in Lincoln County, Georgia and condemned for the construction of the Clark Hill Reservoir on the Savannah River in South Carolina and Georgia.

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[1] "(h) *Trial.* If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court."
Rule 71 A(h), Federal Rules of Civil Procedure, Title 28 U.S.C.A.

Rule 53 (e)(2) reads as follows:

"(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."
Rule 53 (e)(2), Federal Rules of Civil Procedure, Title 28 U.S.C.A.

The district courts in South Carolina and in Georgia appointed the same commissioners. Pursuant to an opinion by Judge Wyche of the South Carolina District Court reported in *United States v. 1532.63 Acres of Land*, 1949, 86 F. Supp. 467, each district court originally ruled that the commission could value the lands for hydro-electric power development. The commission found that the highest and most profitable use for which the property was adaptable was that of a reservoir site for dams on the Savannah River, and that for such use the value of the lands in Georgia was $785,132.26. Each district court adopted the report of the commission as to the value of the lands in that State. See the opinion of Judge Wyche reported in 114 F.Supp. 719 (1953). The Fourth Circuit affirmed, 215 F.2d 592 (1954), as did this Court, 221 F.2d 299 (1955). The Supreme Court reversed on the ground that the United States did not have to pay the value of the lands for a reservoir site on a navigable river. *United States v. Twin City Power Co.*, 1956, 350 U.S. 222, 350 U.S. 956, rehearing denied 350 U.S. 1009.

At the request of counsel for the parties, the commission had made alternative findings of fact, and had determined an agricultural and wild forest valuation of the lands in Georgia to be $90,548.25, only about 11.7% of their value for power purposes. The district court had originally declined to pass upon that alternative valuation. On remand after the Supreme Court decision, the district court held that the commission's alternative findings based on agricultural and forest values were clearly erroneous, made its own findings, and entered judgments accordingly for a total of $222,710.95, more than twice the

value for such uses as determined by the commission.[2] The South Carolina District Court likewise held the commission's findings clearly erroneous and made its own findings. Its judgment has been affirmed in an opinion

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[2] In stating and applying the clearly erroneous standard and making his own findings, the district judge said in part:

"The controlling principles in reviewing Commissioners' findings and recommendations is thus stated in *United States v. Waymire* (1953), 202 F. 2d 550, 553:

" 'Under the plain language of Rule 53, it is the duty of the court to accept the findings of fact made by a master unless they are clearly erroneous. But the findings of a master may be modified in part, or rejected in toto, if they are clearly erroneous. In like manner, under the equally clear language of Rule 71A(h), the findings and awards of a commission shall be accepted unless they are clearly erroneous. But they may be modified in part, or rejected in toto, if they are clearly erroneous. And even though there is evidence to sustain findings of a master or a commission, as the case may be, they are clearly erroneous if the reviewing court on the entire evidence has the definite and firm conviction that a mistake has been committed.'

"With this principle as a guide, I have carefully reviewed all of the evidence on agricultural value to determine on the entire record whether the Commissioners' findings are clearly erroneous and if so, what is the proper award to be made for each of the tracts involved.

"Twin City offered two experienced land appraisers, one, W. N. Henderson of Ninety-Six, in Greenwood County, South Carolina, is a Clemson College graduate with 14 years of experience as a Federal Land Bank appraiser and 4 years with FHA. He has testified in a number of condemnation cases tried before me. The other, Benjamin R. T. Todd, was educated at Clemson and at the Naval Academy. He had long years of experience as Senior Appraiser with the Federal Land Bank in Columbia. Each has appraised many tracts of land in the area of the Clark Hill reservoir.

"The most careful and detailed study of the Twin City lands by any witness in the case was made by Mr. Henderson. He found that about 400 acres of the 2900 in Georgia were rich bottom lands suitable either for row crops, for grain crops, or for grass farming. He made studies as to the cost to put these acres in first-class conditions for these purposes and what they would produce, and their present market value. His conclusion was that aside from the timber and pulp wood thereon, these acres had a value of $100.00 per acre.

"The remaining 2500 acres he testified could be best used for pasturage or for pine tree farming. He gave de-

by Chief Judge Parker of the Fourth Circuit in which that Court held:

"We review the District Judge, not the commissioners; and under Rule 52(a) we may not set

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tailed figures on the rapidity of the growth of the pine, its cost to plant, its market value. He testified that these properties were located in the fastest growing pine timber area in the United States. He fixed the market value of about 150 acres of this land at $70.00 per acre, and the remainder at $80.00. He fixed the value of saw timber and pulp wood on the property at $15,000.00. Mr. Henderson's appraisal totalled $254,230.20.

"Mr. Todd's valuations were somewhat higher. He gave a figure of $100.00 per acre for the entire 2900 acres, or a total of $290,835.00.

"The United States offered as its principal witness Spencer Cooley, who has testified for the Government in most of these condemnation cases, frequently before this Court. Mr. Cooley, without appraisal experience in this part of the country, relied exclusively on a 'comparative sales' approach. From the records of Lincoln County, where these lands are located, he prepared a list of 90 transfers of title and from this list of 90 presented as the basis for his testimony only four sales, of which none was made after June, 1948, though more than half of the Georgia lands of Twin City were taken in 1950. Three of these four sales were of properties in the reservoir area made after notice of the Clark Hill development was widespread. Sales of property about to be taken by the United States have little value as a yardstick for determining the fair market value of neighboring tracts since no farmer would wish to buy land soon to be condemned.

"The United States also offered C. E. Ward, a farmer and cattle raiser who has traded some for his own account but has never had appraisal or brokerage experience. Mr. Ward started to appraise the Twin City properties but after having appraised one large and one small tract, both unidentified, had a 'spell and had to quit'. For some reason the Commissioners based their holding of Agricultural value as to these Georgia lands on Mr. Ward's testimony. It is my view, however, that the constitutional right of Twin City to just compensation may not be based on the evidence of a witness who at best only appraised two of the twelve tracts of land here taken.

"The other two land witnesses were Augusta real estate brokers, Gould Barrett and H. H. Bell. Neither had sold land in this area during the five years preceding 1952 and had little familiarity with the Twin City holdings. Mr. Barrett had found an increasing demand for this type of land for raising pine but thought the market value at the time of

aside his findings unless they are clearly erroneous. When he has set aside the findings of a master or commissioners, we must give consid-

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taking well below the figures given by Messrs. Henderson and Todd.

"On the timber value, the United States offered Clark D. Honnold, an experienced timber cruiser, who carefully appraised the timber on all of the tracts. The Commissioners accepted his appraisals, which total some $12,500.00. Their finding with reference to the timber is approved. Certainly it is not clearly erroneous.

"The Commissioners found that Twin City had assembled into one ownership this large block of land, and added $5.00 per acre for the increase in value attributable to this assembling. Neither side has objected to this holding and it is therefore adopted by the Court.

* * * * *

"The most careful appraisal of the land as distinguished from the growing timber was by the witness Henderson. His experience as an appraiser lends weight to his valuation. The Commissioners described him as a competent land evaluator. My observation of him as a witness in other condemnation cases leads me to the same conclusion. After a study of all of the evidence it is my view that his testimony is entitled to more weight than that of the witnesses for the United States. However, I have concluded that in fixing just compensation the evidence of the Government witnesses should be given some weight and therefore in establishing the awards for the several tracts I have reduced the Henderson appraisals.

"The just compensation to which the owners of the respective tracts are entitled is as follows:

"Tract No.	Acreage			"Henderson Land Appraisal with Honnold Timber Appraisal
C/A 432	Tract	E-434	1064.47 acres	$78,267.50
	Tract	E-439	328 acres	30,600.00
	Total			$108,867.50
C/A 521	Tract	E-443	429.91 acres	$34,253.40
	Tract	E-446	128.03 acres	8,100.65
	Tract	E-457	24.26 acres	1,613.30
	Tract	E-498	3.20 acres	267.00
	Tract	G-600	247.06 acres	18,190.90
	Total			62,425.25
C/A 537	Tract	E-449	5.51 acres	328.05
	Tract	G-616	121.53 acres	9,286.45
	Tract	G-627	546.78 acres	40,995.70
	Tract	G-694	10 acres	808.00
	Total			$ 51,418.20"

eration to the fact that they saw and heard the witnesses and that he did not, and we must pass upon his findings with this in mind; but, unless we can then say that his findings are clearly erroneous when viewed in this light, we must accept them. In the case before us, we cannot say that the findings of the judge were clearly erroneous. On the contrary, we think that he has demonstrated that they rest upon a reasonable basis and that his overruling of the report of the commissioners and adopting a valuation different from theirs should be sustained."

United States v. Twin City Power Co., 1957, 248 F. 2d. 108, 112.

The Government insists that the question for this Court is whether the findings of the commission are clearly erroneous, and that "the Fourth Circuit has placed itself in direct conflict with established law in this respect."

In support of its insistence, the Government cites the following cases: *Morris Plan Industrial Bank v. Henderson*, 2nd Cir. 1942, 131 F.2d 975, 976-977; *National Labor Relations Board v. Remington Rand, Inc.*, 2nd Cir. 1942, 130 F.2d 919, 925; *Krinsley v. United Artists Corp.*, 7th Cir. 1955, 225 F.2d 579, 582. To that list many other persuasive decisions might be added. Judge Parker had himself in an earlier case, *Mutual Savings & Loan Association v. McCants*, 4th Cir. 1950, 183 F.2d 423, 426, 427, taken note of the conflict of authority on the question. In *Phillips v. Baker*, 5th Cir. 1948, 165 F.2d 578, 581, Chief Judge Hutcheson had said for this Court:

"Before proceeding to deal with the separate classes of appeals, a word or two of general ap-

plication will be in order. The first and most important is that in dealing with the questions presented for our decision, we are not dealing with the ordinary situation of an appeal from findings of fact of a district judge which, under Rule 52(a), Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, 'shall not be set aside unless clearly erroneous'. We are, on the contrary, dealing with findings made by the district judge, adverse to those of the referee, in respect to matters primarily remitted for decision to the referee and as to which it is provided[6] that 'the judge shall accept his findings of fact unless clearly erroneous'. Under that rule 'we have the same duty as the district court to accept the referee's findings, unless they are clearly erroneous'.[7] Under that rule, we, of course, take into consideration the fact that the district judge has refused to accept the referee's findings. But we do so not in determining whether the district judge's findings are clearly erroneous for that is not the matter before us. We do it in determining whether the referee's findings are, and we do this with the clearest recognition that the duty to determine whether the referee's findings 'must be accepted' and whether the district judge has erred in not accepting them is not the district judge's but ours.

[6] General Order of Bankruptcy 47, 11 U.S.C.A. following section 53.

[7] Mergenthaler v. Dailey, 2 Cir., 136 F.2d 182, 184."

Finally, the Supreme Court in *Anderson v. Mt. Clemens Pottery Co.*, 1946, 328 U.S. 680, 689, had said:

> "* * * Our examination of the record leads us to acquiesce in these findings since they are supported by substantial evidence and are not clearly erroneous. And the court below correctly held that the District Court erred in failing to accept these findings and in creating a formula of compensation based upon a contrary view. Rule 53 (e)(2) of the Federal Rules of Civil Procedure. See *Tilghman v. Proctor*, 125 U.S. 136, 149-150; *Davis v. Schwartz*, 155 U.S. 631, 636-637."

The holdings of the Supreme Court in *Anderson v. Mt. Clemens Pottery Co., supra*, and of this Court in *Phillips v. Baker, supra*, are each fully sustained by the unquestioned requirement of the several rules (see footnote 1, *supra*, and the rule in bankruptcy referred to by Judge Hutcheson in *Phillips v. Baker, supra*) designed to govern the conduct of the trial court.[3] All of the authorities agree that if the trial court has failed to observe that requirement its judgment cannot be sustained on appeal.[4]

The really difficult problem arises when the district court, presumably cognizant of the "unless clearly er-

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[3] Adams County v. Northern Pac. Ry. Co., 9th Cir. 1940, 115 F.2d 768, 779; Dyker Bldg. Co. v. United States, D.C. Cir. 1950, 182 F.2d 85, 87.

[4] In re Connecticut Co., 2d Cir. 1939, 107 F.2d 734; Santa Cruz Oil Corporation v. Allright-Nell Co., 7th Cir. 1940, 115 F.2d 604; Arrow Distilleries v. Arrow Distilleries, 7th Cir. 1941, 117 F.2d 636; First Nat. Bank & Trust Co. v. Village of Skokie, 7th Cir. 1951, 190 F.2d 791; Helene Curtis Industries v. Sales Affiliates, Inc., S.D.N.Y. 1954, 121 F.Supp. 490.

roneous" requirement of Rule 53 (e)(2),[5] has rejected some or all of the commission's or the master's findings of fact, and in turn Rule 52 (a) commands the appellate court not to set aside the district court's findings of fact "unless clearly erroneous." See 5 Moore's Federal Practice, 2d ed., Paragraph 53.12[4], p. 2987.

It must be remembered that the "clearly erroneous" burden, both under Rule 53 (e)(2),[6] and Rule 52 (a),[7] is not a single definite and certain burden, but varies in accordance with the differing opportunities and presumably different capacities of the several tribunals. Among other considerations, for example, that burden is especially strong when the commission has viewed and inspected the properties, or when credibility is questioned and the commission has had the opportunity to see and hear the witnesses, and is lighter when inferences for and deductions from opinion evidence may be drawn as well by the district court as by the commission, and still lighter when the appellate court in turn reviews the inferences drawn by the district court from the written transcript of evidence, though the "clearly erroneous" rule is still applicable.—See *Galena Oaks Corporation v. Scofield*, 5th Cir. 1954, 218 F.2d 217, 219.

There appears to be some similarity between the situation presented when the Supreme Court reviews a decision of a court of appeals denying enforcement to the

[5] In this case the district court expressly recognized the "unless clearly erroneous" rule. See Footnote 1, supra.

[6] See Carter Oil Co. v. McQuigg, 7th Cir. 1940, 112 F.2d 275, 279.

[7] See Galena Oaks Corporation v. Scofield, 5th Cir. 1954, 218 F.2d 217, 219.

order of an administrative tribunal[8] and that presented when a court of appeals reviews a judgment of a district court setting aside the report or findings of a master, referee, or commission. The governing rules are not, however, precisely the same, and the analogy must be applied with caution.

The decisions of the state courts are similarly in conflict as to the scope or rule of appellate review when the trial court and the master or referee do not agree. 5 C.J.S. Appeal and Error, Section 1670. Much of that conflict can probably be explained by the differing statutes or rules in force in the several states.

Indeed, the elaborate discussion in which we have indulged would seem to be quite unnecessary when it is observed that Rule 52 (a) specifically provides for the application of the clearly erroneous rule to the findings of a master. That Rule, after stating that the district court's findings of fact are not to be set aside "unless clearly erroneous", goes on to state: "the findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court." Under the *inclusio unius, exclusio alterius* rule of construction, it would seem to be implied, or to follow, that the findings of a master, to the extent that the court rejects them, are not within the protection of the clearly erroneous rule.

[8] In such cases the Supreme Court does "no more on the issue of insubstantiality than decide that the court of appeals has made a 'fair assessment' of the record." F.T.C. v. Standard Oil Co., U.S. No. 24, Oct. Term 1957, decided January 27, 1958; Labor Board v. Pittsburgh SS Co., 340 U.S. 498, 502, 503.

We conclude, then, that the questions on appeal are: (1) whether the district court applied the proper standard in considering the findings; (2) whether it erred in rejecting the findings of the commission as clearly erroneous; and (3) whether, in turn, the findings made by the district court are clearly erroneous.

Whatever gloss may be given to the formulas, our careful study of the evidence has led us to a like conclusion to that reached by the Fourth Circuit. The district court professedly, and we think actually, applied the proper standard to the commission's findings. We cannot say that the district court erred in rejecting the commission's findings as clearly erroneous, or that the findings of the district court are themselves clearly erroneous.

The commission was composed of a real estate operator of Augusta, Georgia, a banker of Greenwood, South Carolina, and an attorney of Columbia, South Carolina. There is no report of any personal inspection of the properties by the commission. After taking the testimony of a number of witnesses, the commission took the valuation of G. E. Ward for the Georgia lands, the timber valuation of Clark D. Honnold, and "added a value of Five ($5.00) Dollars per acre to these lands by reason of their having been collected and assembled into one unified ownership."

In rejecting the commission's findings under the clearly erroneous standard and making its own, the district court carefully considered and analyzed the testimony. (See footnote 2, *supra.*) Our study of the record convinces us

that there is ample support for the views of the district court.

The Government insists that a mistake such as to warrant holding a finding clearly erroneous must be something more than merely a matter of credibility or of the weight to be accorded the testimony of witnesses. There was no claim or suggestion that any of the witnesses intentionally testified untruthfully. Apparently each gave his honest opinion. The weight to be accorded that opinion depended upon such things as the previous experience of the witness, the thoroughness of his inspection and study of the properties, and the reasons supporting his valuations. In passing upon such matters, the district court was in virtually as good position as were the members of the commission.

Nor do we think that the district judge was subject to criticism for referring to the opinion he had formed of some of the witnesses from their testimony before him in similar cases. See Footnote 2, *supra*. Certainly, such knowledge of the witnesses would not disqualify the judge. It was natural, if not inevitable, in passing on the witness's testimony, that the judge should consider his own estimate of the worth of that witness's opinion, and for him frankly so to state was simple mental honesty. In each instance the judge's personal opinion was supported also by the record in the present case. The judge's findings were not, we think, controlled by his prior knowledge and experience, and the minor extent to which they were so influenced was simply unavoidable.

The Government makes some suggestion that, under the principle developed in another recent decision of the Fourth Circuit, *United States v. Cunningham*, 1957, 246 F.2d 331, the remedy for an incomplete consideration by the commission is resubmission to it, not the making by the court of its own findings. The issue was a simple one of valuation. There are no claims that the commission erred in ruling on the admissibility of testimony, or committed any other error of law. The commission reported its views on valuation, and it would be futile for the court simply to direct the commission to reconsider its findings. Under the circumstances of this case, we think that the court followed the better practice in proceeding, as we understand to be authorized by Rule 53 (e)(2), Federal Rules of Civil Procedure. See also 30 C.J.S. Equity, Section 560. As Chief Judge Clark of the Second Circuit said in *United States v. Bobinski*, 1957, 244 F.2d 299, 302:

> " * * * Of course it was not necessary for the district judge to send the case to a commission once again, and he was completely justified in concluding the protracted litigation with findings of his own. United States v. 44.00 Acres of Land, supra, 2 Cir., 234 F.2d 410, certiorari denied Odenbach v. United States, 352 U.S. 916, 77 S. Ct. 215, 1 L.Ed. 2d 123."

The Government argues that due process requires the reversal of the judgment entered by the district court. This case is very different from *Smith v. Dental Products Co.*, 7th Cir. 1948, 168 F.2d 516, where the master died after the testimony had closed but before he made a report. Here the commission reported, the testimony

was all duly introduced and considered by the district court in line with the historic power of an equity court to accept, reject or modify the findings of a master. See *Camden v. Stuart*, 1892, 144 U.S. 104, 118, and cases cited; 30 C.J.S. Equity, §560; Rule 53 (e)(2), Federal Rules of Civil Procedure. No case, so far as we know, has held that practice to be lacking in due process simply because the district court had not seen and heard the witnesses.

The quotations in footnote 2, *supra*, have been taken from the district court's order entered on November 2, 1956. On December 31, 1956, Twin City Power Company of Georgia filed its notice of appeal from that order. That order had concluded with the following paragraph:

> "It Is Therefore Ordered that judgments be entered in Civil Actions 432, 521 and 537 in the amount of the awards set out above, together with interest from the date of taking in the respective actions and subject to credit for the amounts paid in by the United States on the dates on which these payments were made to the Clerk of this Court. Let the District Attorney, after consultation with counsel for the landowners, submit appropriate judgments to the Court."

Formal judgments were entered in each of the three cases on January 15, 1957. Twin City filed no further notice of appeal.

The Government insists that Twin City's appeal is without foundation both for lack of jurisdiction and for

lack of merit. The lack of merit is so clear that we forego deciding the jurisdictional question.[9]

Twin City has not specified error with respect to its flowage rights nor has it advanced in this Court the argument in support of such rights which it successfully asserted before the Fourth Circuit, possibly, we may surmise, because only 32 of the so-called "flowage acres" are situated in Georgia. Under our Fifth Circuit Rule 24 (b), errors not specified will ordinarily be disregarded.

The only error claimed and argued on Twin City's appeal is that the five-to-four decisions of the United States Supreme Court in *United States v. Twin City*, 350 U.S. 222, and *United States v. Twin City of Georgia*, 350 U.S. 956, are unsound. Those decisions are, of course, binding upon this Court.

Finding no reversible error in the record, the judgments are

AFFIRMED.

[9] Upon jurisdiction, the Government relies on F. & M. Schaefer Brewing Co. v. United States, 2d Cir. 1956, 236 F.2d 889, certiorari granted March 25, 1957, 353 U.S. 907, and argued before the Supreme Court January 6, 1958; and on many other cases. Twin City relies also on that case and on Milton v. United States, 5th Cir. 1941, 120 F.2d 794; Woods v. Nicholas, 10th Cir. 1947, 163 F.2d 615; Matteson v. United States, 2nd Cir. 1956, 240 F.2d 517; Rules 58 and 73 of Federal Rules of Civil Procedure.

TUTTLE, Circuit Judge, DISSENTING:

Believing as I do that the Court has applied the wrong standard controlling our review of the judgment of the District Court, I respectfully dissent.

Added to the usual disinclination to dissent from my colleagues constituting a majority of the Court, I find a further reluctance from the fact that the Court of Appeals of the Fourth Circuit, whose opinion is stated to be at least a partial basis of the opinion of the majority here, has adopted the view of the law with which I find myself in disagreement. Moreover, in disagreeing with the Fourth Circuit, I fully appreciate that if my views were adopted by this Court there would be, subject of course to review by the Supreme Court, a difference in standard of valuation and a very substantial difference in the amount paid per acre for lands involved in the same condemnation area merely by reason of their lying in two different judicial circuits. I feel, however, that what I consider to be an error in the standard of appeal adopted by the Fourth Circuit and by this Court is of such importance in the field of condemnation that I am constrained to state the reasons for my disagreement.

The opinion of the majority states the questions to be: (1) Whether the district court applied the proper standard in considering the findings; (2) whether it erred in rejecting the findings of the commission as clearly erroneous; and (3) whether, in turn, the findings made by the district court are clearly erroneous. I think the first two questions merge, for if the district court (1) applied the proper standards then it (2) did not err in rejecting

them, and vice versa. As to (3) I agree that if the district court could legally set aside the findings on the record before it, then, as to its own valuation, substituted for them, it is protected by the clearly erroneous rule and we would probably be compelled to affirm, although I think it is strongly against the weight of the evidence.

I think the question can be put more simply as follows:

Where, in condemnation proceedings, commissioners are appointed by the district court under Rule 71(A)(h) and the Commission makes a finding of valuation of lands taken, which valuation is later set aside by the district court as being clearly erroneous, does the Court of Appeals review the action of the commission to ascertain whether its valuation was clearly erroneous or does it review the judgment of the district court to ascertain whether his order setting aside the commission's findings and the findings substituted by him for those of the commission are clearly erroneous?

Although the opinion of the majority does say "we cannot say that the district court erred in rejecting the commission's findings as clearly erroneous," I think it clear that the court was not prepared to say "we think the commission's findings were clearly erroneous and we would set them aside." I think that unless this court can say that, then the language used by the majority attributes to the fact that the trial court acted in the matter some added but unexplained nebulous ingredient to the standard which we apply to our appeal here. I find

no basis in law or logic for such proposition unless all it means is that we are to consider the fact that the trial court in effect expressed the legal opinion that it had the right to do what it did. It seems to me that the court means something more than that, but just what it is the opinion fails to say.

The opinion of the majority approves the holding of the Fourth Circuit where it is held:

> "We review the district judge, not the commissioners; and under Rule 52(a) we may not set aside his findings unless they are clearly erroneous."

I think this is contrary to the otherwise unbroken line of authorities of the federal appellate courts that have had to deal with this subject.

All parties agree that the scope of review by this Court is the same as exists when a district judge overrules findings of fact by a master or a referee in bankruptcy. We need not look beyond our own Circuit to find an authoritative decision as to our scope of review in such a situation. In *Phillips v. Baker*, 5 Cir., 165 F. 2d 578, this Court, speaking through Chief Judge Hutcheson, said:

> "The duty to determine whether the referee's findings 'must be accepted' and whether the district judge has erred in not accepting them is not the district judge's but ours.[1]

[1] The entire paragraph from which this quotation is taken is quoted in the majority opinion.

I think that *Anderson v. Mount Clemens Pottery Company*, 328 U.S. 680, establishes this proposition too clearly for question. The court there said:

> "Our examination of the record leads us to acquiesce in these findings [of the master] since they are supported by substantial evidence and are not clearly erroneous and the court below [the Court of Appeals] correctly held that the district court erred in failing to accept these findings and in creating a formula of compensation based upon a contrary view." 328 U.S. 680, 689.

The Courts of Appeals of other circuits have expressed the same principle. As for instance in the Eighth Circuit it was stated in *Sanitary Farm Dairies v. Gammell*, 195 F. 2d 106, 118, as follows:

> "Opposite factual views might perhaps with equal right have been capable of being reached on the evidence and might have been required to be sustained by us, had they constituted initial determination in judicial administration. But here it was the master and not the court which was the initial fact appraiser, and the court could not, under Rule 53(e)(2), Federal Rules of Civil Procedure, 28 U.S.C.A., refuse to recognize the master's findings or escape the conclusion to which they led, merely because of a difference in personal persuasion on the evidence or a dissatisfaction with the result reached."

See also *Krinsley v. United Artists Corp.*, 7 Cir., 225 F. 2d 579, and *Ferroline Corp. v. General Anoline & Film*

Corp., 7 Cir., 207 F. 2d 912, where at page 920 the Court of Appeals said:

> "The threshhold question here then is the same as it was in the court below, whether, as a matter of law, the master's findings of fact were clearly erroneous."

And see *Morris Plan Industrial Bank v. Henderson*, 2 Cir., 131 F. 2d 976, 977, quoted *supra* in the opinion of the majority.

It is clear to me from reading the opinion of the Court that it does not intend to state categorically the valuation found by the commissioners was clearly erroneous. The nearest approach to such a statement is the Court's comment:

> "We cannot say that the district court erred in rejecting the commission's findings as clearly erroneous, or that the findings of the district court are themselves clearly erroneous."

In light of the acceptance of the Fourth Circuit's view that the judgment of the trial court is itself protected by the clearly erroneous rule, this does not, it seems, amount to a statement by the court that the commissioners' findings were clearly erroneous. I can sympathize with the majority's refusal to hold that the Commission's findings are clearly erroneous. Such a holding on a record as replete with supporting evidence as this would come back to haunt us in every future case in which a litigant seeks a reversal of the findings of a trial court. In my opinion it would make a meaningless phrase out of the clearly erroneous doctrine. I think on the record which was

the basis of the commission's findings, neither the district court nor we could legally hold their valuation clearly erroneous, and that therefore the judgment arrived at by the district court "by creating a formula of compensation based upon a contrary view," to use the language of the Supreme Court in the Mount Clemens Pottery Company case, was wrong and must be reversed. It seems to me clear beyond doubt that viewing this Court as having the duty to approve the valuation found by the commission, unless clearly erroneous, we could not conceivably make such a finding on the record before us.

There were four witnesses for the Government, all of whom were found by the commission to be competent appraisers and all of whom testified that the land was worth substantially less than the valuation arrived at by the commission. Without attempting to detail the entire testimony, it seems to me sufficient, in order to demonstrate the substantiality of this evidence, to comment briefly on some of the testimony. One of the witnesses, Ward, testified that he had been born and raised in the county in which most of the land lies, that he had bought and sold land in the very tracts involved, that he had cruised it for timber, that he had bought lands much closer to town than the lands here in issue within a reasonable period before the taking at substantially lower prices per acre than his estimate; that he had, for the purpose of this appraisal, inspected two of the tracts.[2]

[2] The district court commented adversely on the fact that before he personally inspected the other tracts for the purpose of this appraisal he had a heart attack and was unable to finish the inspection, overlooking completely his undisputed testimony that he had been familiar with those lands

Mr. Ward's testimony, which the commission used primarily as to a basis for its valuation, was to the effect that the lands as to which the commission found "there were no improved roads, no utility lines, no railroads, no bridges, no buildings, and practically no improvements of any nature," was worth approximately $31 per acre. In his appraisal I think it is clear from the record that in some instances he included some value for standing timber. To the figure testified to by Mr. Ward, the commissioners added some $12,000 for timber on the entire tract and also added $5 per acre which they found to be the value resulting from the assembling of the several tracts. The district judge, after setting aside the finding by the commissioners, found a valuation of approximately $80 per acre.

In addition to Mr. Ward's testimony there was evidence offered by two Augusta real estate dealers, both of whom testified to their knowledge of the property and of sales in connection with comparable tracts. Their testimony was that the property was worth substantially less than $31 an acre. So too was the evidence given by the Government's witness, Spencer Cooley, who had spent some four or five years studying the property in this area of condemnation as an appraiser for the Government. His testimony as to value was somewhat lower than Mr. Ward's and was based on his study of sales of land in the vicinity. In order to arrive at comparable

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all his life. The opinion of the district judge, in discussing Mr. Ward's failure to inspect the tracts in connection with this particular appraisal, mistakenly speaks of it as though he had "at best only appraised two of the twelve tracts of land." (Emphasis added.) Obviously Mr. Ward *appraised* all of them, but inspected only two of them *in direct connection with this appraisal.*

sales he made a study of all of the sales in the area over a period of several years, finally considering 90 separate transfers of title. His testimony was supported finally by four particular sales which he considered most nearly comparable. Obviously, however, the consideration that he would give to all of the other sales in the area was a matter which would go to the weight of his testimony as an expert. All of this material was before the commissioners and properly entered into their appraisal of the worth and weight to be given to the opinions of the experts.

The trial court stated that:

> "The most careful appraiser of the land as distinguished from the growing timber was by the witness Henderson. His experience as an appraiser lends weight to his valuation. The commissioners described him as a competent land evaluator [as they did also as to all other witnesses]. *My observation of him as a witness in other condemnation cases leads me to the same conclusion.* After a study of all the evidence it *is my view that his testimony is entitled to more weight* than that of the witnesses for the United States." (Emphasis added.)

This entire statement by the court is in terms of the evaluation of the weight to be given to the testimony of experts. Obviously there is much more to be considered by the tribunal, whose duty it is to make the findings based on such testimony, than a question of credibility in the usual sense. The appearance and plausibility, the apparent frankness and presence of or lack of interest,

the degree of understanding of the factors that go into making up a proper basis for valuation, are all things that become apparent to the tribunal that hears and sees the witnesses. A holding by any court that the valuation here arrived at by the commissioners was clearly erroneous in spite of the substantial quality of the evidence would, it seems to me, be contrary to accepted principles on which such findings can be reviewed and set aside.

As we have recently stated in *Stephens v. United States, supra,* in quoting with approval the unreported opinion of the district court whose judgment we affirmed:

> " . . . it was for the Commission to determine the credibility of the witnesses and the weight to be given their testimony. The findings of the Commission have ample support in the evidence and it is not for the Court to substitute any finding that he might make from the evidence for that made by the Commissioner who observed and heard each and every witness testify."

And also:

> "Since the award is within the range of the credited testimony, and the commission was not bound to accept the valuation of any particular witness, we may not reweigh the evidence in a de novo review or reverse merely because the commission found a valuation more closely based upon the testimony of the Government appraisers than upon that of the landowner's witnesses." *Stephens v. United States,* 5 Cir., 235 F. 2d 467,469,471.

I think that the trial court erred in setting aside the finding of valuation by the commissioners and that its judgment should be reversed with instructions to enter a judgment for the amounts fixed by the commissioners in their finding.

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No. 785

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, *Petitioner*

v.

TWIN CITY POWER COMPANY and WILLIAM P. DAUCHY, Its Mortgagee

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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March, 1958

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OPINIONS BELOW

The opinion-order of the District Court is not reported. It is printed in the Appendix, *infra*, pp. 1a-9a.* The opinion of the Court of Appeals and its

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* References to the Appendix to this brief are shown as "(App., p. ....)." References to the Appendix to the petition are shown as "(Pet. App., p. ....)." "R." references are to the Appendix for the United States filed in the court below.

further order denying rehearing (Pet., App. pp. 20-33), are reported at 248 F. 2d 108.

JURISDICTION

The judgment of the court of appeals was entered on July 15, 1957 (Pet., App. pp. 33-34). A petition for rehearing was denied on September 18, 1957. By order of the Chief Justice, dated December 12, 1957, the time for filing a petition for writ of certiorari was extended to and including February 15, 1958. The petition for a writ of certiorari was filed February 14, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether this Court should review findings of fact made by commissioners pursuant to Rule 71A(h) of the Federal Rules of Civil Procedure that have already been rejected as "clearly erroneous."

2. Whether the decision below is in conflict with decisions of other courts of appeals.

3. Whether the decision below, though not final as to the question of the value to be accorded flowage easements, laid down the correct principles of valuation to guide the district court on remand.

FEDERAL RULES INVOLVED

Rule 71A(h), Federal Rules of Civil Procedure, provides as follows:

> Trial.—If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation

shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court.

Rule 53(e)(2), Federal Rules of Civil Procedure, provides as follows:

In Non-Jury Actions.—In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

STATEMENT

The petition is a continuation of the litigation resulting from the opinion and remand by this Court in *U. S.* v. *Twin City Power Company,* 350 U.S. 222, *rehearing denied,* 350 U.S. 1009.

The case involves compensation for the taking by Petitioner of property owned by Respondent in South Carolina, and by its wholly owned subsidiary in Georgia, for the construction of the Clark Hill Reservoir on the Savannah River. As a result of the filing of declarations of taking by Petitioner, commissioners were appointed by the district court to value the taken property. The commissioners concluded that Respondent's lands in South Carolina had a value of $267.02 per acre if the availability of such lands for hydroelectric power purposes was taken into account; but, that such property had a value of approximately $37 per acre as agriculture or wild forest lands.

The district court, without considering or approving the value for agriculture and forest purposes, approved the commissioners' valuation of the lands for water power purposes. The court of appeals affirmed. This Court granted certiorari and reversed on the ground that "the value of the land as a site for hydroelectric power operations" could not be an element of just compensation.

On remand, the district judge, sitting with the District Judge for the Southern District of Georgia, who had jurisdiction with respect to the lands on the Georgia side of the river, for the first time considered and reviewed the evidence and findings of the commissioners as to the value of Respondent's lands for agriculture and forestry purposes. After a most careful

and detailed review the district court in its order-opinion dated November 1, 1956 (App., pp. 1a-9a) held that the findings of the commissioners as to the agriculture and forest value of the lands were "clearly erroneous." The District Court for the Southern District of Georgia reached the identical conclusion. The District Court in South Carolina found the correct agriculture and forest value of the lands, including standing timber but excluding hydroelectric power site value, to be approximately $80.00 per acre. This resulted in an award which was 27% of prior power site value. Petitioner appealed.

In addition, the commissioners had concluded that Respondent's claim for the taking of certain flowage easements should be ~~denied if~~ hydroelectric power site value were not included, since in that event, the "flowage acres [would] have no value whatsoever in the hands of Twin City." (R. 206). The district court on remand agreed with this alternative conclusion of the commissioners and Respondent appealed.

On appeal, the Court of Appeals for the Fourth Circuit affirmed the judgment of the district court insofar as it had awarded agriculture and forest value in compensation for the lands which Respondent had owned in fee simple. The court of appeals reversed the judgment of the district court insofar as it had held that Respondent's flowage easements were worthless and remanded for further proceedings to place a value on these easements.

ARGUMENT

I. THE COMMISSIONERS' FINDINGS OF FACT HAVE BEEN PROPERLY REJECTED AS "CLEARLY ERRONEOUS"

Petitioner's first argument for certiorari is nothing more than the usual attempt by the party who has lost its case on the facts in two lower courts to enlarge its continuing dispute on these facts with those courts into a further review by this Court. In order to clothe the factual nature of its argument in legal dress, Petitioner, naturally, contends that the district court below disregarded the requirement of Rule 53(e)(2) of the Federal Rules of Civil Procedure, which states that "the master's findings of fact [shall be accepted by the court] unless clearly erroneous." The prescription of Rule 53(e)(2), which is made applicable by Rule 71A(h) to the findings of fact of commissioners in condemnation proceedings, is said to have been ignored. This argument is supported by reference to selective excerpts from the testimony of witnesses who appeared before the commissioners. Hence, here, as in the district court and as in the court of appeals, Petitioner seeks a determination that findings of fact are not "clearly erroneous." An attempt to secure such a determination is the sole purpose of the first question presented by the petition.

Here there is no issue regarding the principles of review under Rule 53(e)(2) cited by Petitioner (Petition, p. 11). Respondent does not maintain that the district court below was free to set aside the commissioners' findings, as Petitioner states, "purely on the basis of a differing estimate of the weight to be accorded to the conflicting testimony of the witnesses" (Petition, p. 2). The district court did not act on any such basis. It set aside the commissioner's findings

because, after careful review and detailed discussion, it found them to be "clearly erroneous" within the meaning of Rule 53(e)(2).

Joined in his review of the commissioners' findings by the district judge from Georgia, who made a like decision to reject the findings as they were applicable to Respondent's lands in that state, the district judge below (App., p. 2a) followed the "controlling principle" for reviewing commissioners' findings stated in *United States* v. *Waymire,* 202 F. 2d 550, 553 (1953):

> ". . . Under the plain language of Rule 53, it is the duty of the court to accept the findings of fact made by a master unless they are clearly erroneous. But the findings of a master may be modified in part, or rejected in toto, if they are clearly erroneous. In like manner, under the equally clear language of Rule 71A(h), the findings and awards of a commission shall be accepted unless they are clearly erroneous. But they may be modified in part, or rejected in toto, if they are clearly erroneous. And even though there is evidence to sustain findings of a master or a commission, as the case may be, they are clearly erroneous if the reviewing court on the entire evidence has the definite and firm conviction that a mistake has been committed. . . ."

The court's further citation (App., p. 3a) to *United States* v. *U. S. Gypsum Co.,* 333 U.S. 364, 395, again indicates its complete understanding of the applicable rule of review. In the *Gypsum* case, this Court declared (333 U.S. at 395):

> ". . . A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

Nor was the action taken by the district court below unique or extreme. Findings of masters or commissioners have more than once been set aside by district judges, who have been then upheld on appeal. See, *e.g., United States* v. *44 Acres of Land,* 234 F. 2d 410 (2d Cir. 1956), *cert. denied sub nom. Odenbach* v. *United States,* 352 U.S. 917; *Krinsley* v. *United Artists Corp.,* 235 F. 2d 253 (7th Cir. 1956). To deny a district judge this power, as Petitioner seems to do, would remove from him the ultimate responsibility for findings of fact in non-jury cases, which the Federal Rules of Civil Procedure clearly intend that he have. Rules 52(a), 53(e)(2), 71A(h).

Unquestionably, therefore, there is no dispute between Petitioner and Respondent, or Petitioner and the district court, over the principle of law to be applied in reviewing the commissioners' findings. But, Petitioner argues, the district court did not apply this principle. And to support this contention it cites, as it must, evidence from the testimony of witnesses who appeared before the commissioners. As was inevitable, Petitioner's argument leads it to urge this Court also to review the testimony and then to decide for itself whether the district court acted properly. This invitation is extended after two courts have already agreed upon the factual issues Petitioner wishes to have reviewed for a third time.

The extracts from the testimony of witnesses, which the Petitioner cites in support of its view that the district court erred, are the typical selective, one-sided bits of evidence which a party seeking to overturn findings of fact urges upon an appellate court. Conveniently for itself, the Petitioner neglects to note the great body of evidence recounted in the district court's

opinion which left it, to use the words of this Court in the *Gypsum* case, *supra*, "with the definite and firm conviction that a mistake had been committed."

Merely illustrative of the significant evidence upon which the district court relied in holding the commissioners' findings "clearly erroneous" is the following:

(1) Most significantly, the sales of comparable lands in the neighborhood of Respondent's taken lands, on which the Petitioner's chief witness, Cooley, relied for his appraisal, were made several years before the time of the taking in late 1949 and in 1950 (R. 150). The witness admitted that at the time of the taking it would have been necessary to pay a higher price for these comparable lands than the prices paid in the earlier sales he relied upon (R. 150-152).

(2) Cooley listed over 400 land transfers which he chose initially for his "Comparable Sales" method of appraisal, but his *actual* comparison of land values with Respondent's properties were based entirely on seven selected sales whose price the witness admitted to be much lower than the price paid for other comparable lands on his initial list (R. 137-41). Nor was any explanation offered for this failure to include higher priced land sales except that the witness "did not deem it necessary for this purpose to have a longer list than" the sales selected (R. 136). Moreover, of these seven sales actually relied upon, five were made in the area of the reservoir itself after Petitioner announced that the dam project was to be developed. Such sales could not evidence "market value," for no farmer would buy such land knowing that it was to be flooded in a year or two (App., p. 4a; R. 144-46, 181). From the foregoing, the district judge concluded that

Cooley's testimony contained "little of probative value" (App., p. 4a).

(3) Another of Petitioner's witnesses, Cox, a sawmill operator, was able to appraise the land primarily for its timber value and then only in terms of "making a sawmill man's profit on it" (R. 88, 94). He was apparently unable to value the properties as cattle pasture lands although he admitted this to be one of their best uses (R. 89, 97).

(4) The district court also discussed the testimony of Respondent's witnesses, particularly that of the witness Henderson, whose testimony it found to be compelling for its completeness and consistency (App., p. 3a). Henderson, a farmer and cattleman with 18 years of appraisal experience for the Federal Land Bank and the Federal Housing Administration, had appraised over 45,000 acres in the area of the dam project (R. 3, 9). He had studied each tract in detail, spending some seven or eight days in reaching its valuations. He pointed out, in support of his figures, that the taken lands were in an area experiencing rapid growth in cattle raising and that the bottom lands were very valuable for row crops (R. 10). The district court described Henderson's valuations as "the most careful appraisal of the land" (App., p. 8a).

A reading of the district court's opinion discloses numerous other aspects in which the testimony of Petitioner's witnesses was defective and of dubious value as compared with the evidence provided by Respondent's witnesses. Citation of these parts of the testimony would be uselessly repetitious here.[1]

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[1] The district judge noted, in addition, what he termed "a major inconsistency in the Commissioners' report" (App., p. 6a). When

This Court should, moreover, reject Petitioner's persistent attempt to confuse the district judge's careful setting aside of the commissioners' findings as "clearly erroneous" with the problem of determining the credibility of witnesses. An attentive reading of the district judge's opinion discloses that he did not pick and choose among testimony which could possibly be affected by the credibility of the witness giving it. He was, rather, concerned with the *competency* of the various witnesses who testified for Petitioner and Respondent (App., 3a-5a). In addition, as already noted above, he was particularly disturbed by the serious gaps and inconsistencies in the testimony of Petitioner's chief witness, Cooley, whose appraisal of the lands was based largely on selected sales made several years before the taking and who himself admitted that near the time of the taking a much higher purchase price would have been demanded than his appraisals indicated (App., p. 4a). Confronted with this and other evidence highlighting the weakness of Petitioner's witnesses and their testimony, the district judge acted

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the commissioners first valued Respondent's lands on the basis of their use for a power site, they deducted from the market value figure a sum equal to the value of lands which Respondent did not own but on which it had options to flood that had expired at the time of the taking. In valuing these latter "option acres" the commissioners had accepted a figure of $80 per acre as their value for agricultural purposes, and then multiplied this figure by 5.7 to reach the "hold-up" price for the lands which would have been demanded of a power site developer (App., p. 6a; R. 1-3; 214, 245-6). The district judge declared on this point (App., p. 6a): "If the agricultural value is $80.00 per acre when a deduction from power value is under consideration, it is difficult to rationalize a value of $30.00 when agricultural value is the yardstick of just compensation. This inconsistency confirms my view that the Report is clearly erroneous in its determination of land values . . . ."

fully within his power under Rule 53(e)(2) in rejecting the commissioners' findings. That he did not do so arbitrarily is evidenced, in part, by his acceptance of the valuation fixed by Petitioner's witness, Honnold, for the timber on the taken lands. Petitioner's attempt to inject the "credibility of witnesses" issue to support the contention that the court violated its reviewing function should, accordingly, be recognized for what it is: a means to place in a more attractive light for this Court the essentially factual issues sought to be reviewed.

Respondent respectfully submits that, so understood, this portion of the petition for certiorari presents for review by this Court questions controlled purely by the facts involved in the condemnation proceedings which are the subject of this litigation. A grant of certiorari on this point would, as a result, necessarily compel this Court to engage in a restudy of those facts solely for the purpose of deciding whether the district court was correct in holding the commissioners' findings "clearly erroneous." Although this Court has the power to undertake such a study, it would be entirely unwarranted in this case, for the Petitioner has failed to demonstrate that the district court proceeded with even slight disregard for the principle of law controlling its action or without a thorough and searching analysis of the evidence presented to it for review.

The first question presented should, thus, be treated under the long-standing practice of this Court to deny certiorari where the issues presented for review are "findings of fact" made or approved by two lower courts. See *United States* v. *Dickinson*, 331 U.S. 745, 751; *Comstock* v. *Group of Investors*, 335 U.S. 211,

214; *Pick Mfg. Co.* v. *General Motors Corp.*, 299 U.S. 3. The district court made findings of fact after it held those of the commissioners to be "clearly erroneous." The court of appeals affirmed. With the proceedings in this posture, Petitioner's attempt to have this Court engage in a further inquiry into the facts of this case should be summarily rejected.

II. The decision below does not conflict with decisions of other courts of appeals

As the second ground for seeking certiorari, the Petitioner urges upon this Court an interpretation of the opinion of the court below which, Petitioner claims, would bring that court into conflict with decisions of other courts of appeals (Petition, pp. 12-14). Relying entirely upon a single sentence from the opinion of the court below, Petitioner would have this Court believe that the court of appeals reviewed *only* the question of whether the findings of fact made by the district judge were "clearly erroneous," while entirely disregarding the validity of the findings of fact made by the commissioners. Without even seriously investigating in its petition what and whom the court below did in fact review, the Petitioner rushes immediately into a claim that a conflict among the circuits exists.

It is not surprising that no attempt was made by Petitioner to describe explicitly what review of the proceedings was undertaken by the court of appeals and how it was in error. For, as shown below, the court methodically scrutinized first the findings of fact of the commissioners and then the findings of the district court. The court held that the findings of the former were "clearly erroneous" and that those of the latter were not. This, exactly, is what Petitioner

claims should have been done; this, exactly, is what the court of appeals did.

The very first sentence of that portion of the opinion of the court below which deals with the findings of the commissioners makes unmistakably clear that it was subjecting their findings to the review of the "clearly erroneous" test. Thus, the court of appeals stated (Pet. App., p. 22):

> "We think that the District Judge was justified in holding the report of the Commissioners as to the valuation of the land for agriculture and forestry purposes to be clearly erroneous and substituting a valuation at which he had arrived after a careful study of the testimony; and weight is added to his action by reason of the fact that the District Judge from Georgia, sitting with him and reviewing the same record took similar action."

It is nearly impossible to construe this portion of the opinion to mean that the court was limiting its review to a study of the findings made by the district court. This conclusion is borne out by the court's discussion of the commissioners' report and the district court's opinion which follows this introductory sentence (Pet. App., pp. 22-24). It is true that the court of appeals, in holding the findings of the commissioners "clearly erroneous," cited the same findings of fact made by the commissioners that led the district court to reach a like decision. But contrary to Petitioner's suggestion, made with no elaboration or analysis of the court's opinion, that this unanimity of view in the two courts below resulted from an abdication of its responsibility by the court of appeals, it is far more plausible to conclude that the courts below agreed *be-*

cause the commissioners' findings of fact were "clearly erroneous."[2]

Petitioner's sole basis for the claim that the court of appeals erroneously limited its review to the findings of fact made by the district court is contained in a later portion of the court's opinion appearing *after* it had already determined that the commissioners' findings were in error. The court then felt called upon to decide whether the substituted findings made by the district court were themselves "clearly erroneous." In so doing, the court of appeals appeared to be following the procedure employed recently by the Court of Appeals for the Second Circuit in *United States* v. *44 Acres of Land, supra,* another condemnation proceeding. There, the late Judge Frank declared (234 F. 2d at 414):

> "It is obvious to us, and it was to the judge, that, in valuing the property, the Commissioners (despite their statement that they took all pertinent factors into consideration) relied primarily on reproduction-cost-new less depreciation. *The*

[2] The opinion below was signed by Judges Parker, Soper and Haynsworth. An earlier opinion by two of these members of the court below in another condemnation proceeding makes very evident their understanding that the findings of fact of commissioners were to be subjected to review in the court of appeals. In United States v. Wateree Power Co., 220 F.2d 226 (4th Cir. 1955), an appeal in another proceeding involving lands taken for the same dam project as were Respondent's, Judge Soper, writing for Judges Parker and Dobie, upheld an award made by commissioners, and affirmed by the district court, which measured a landowner's compensation for his taken land by its value for industrial site purposes. While the court there decided initially whether, as a matter of law, such a basis for valuation was permissible the major portion of its opinion reviewed the accuracy of the value actually placed upon the lands by various witnesses.

> *judge,* in his excellent opinion, *properly rejected such a valuation. We think his revised valuation is amply supported by the evidence, and that it is not 'clearly erroneous.'*
>
> "We think it immaterial that, in revising the Commissioners' findings as to 'severance' and rental values, the judge did not explicitly state that they were clearly erronous. We think his revised findings are amply supported by the evidence." (Emphasis added.)

Whether such double-review is required by Federal Rules 52(a) and 53(e)(2) is irrelevant in the present action. Certainly, it is not a basis for certiorari. No possible harm could have been suffered by the Petitioner from the action of the court below in reviewing whether the findings of both the district court and the commissioners were "clearly erroneous," and none is claimed. Indeed, in these proceedings it was the Respondent, not the Petitioner, who was exposed to possible reduced recovery by this procedure adopted by the court of appeals.

From all the foregoing, there can be no doubt that Petitioner's claim of a conflict between the court below and other courts of appeals is spurious. The decisions cited by Petitioner and that of the court of appeals below are entirely in accord. As has been indicated above and as a reading of the court's opinion demonstrates, the decision of the court below—like the decisions of the courts on which Petitioner relies for a conflict—does review the findings of the initial trier of fact. Petitioner's claim of conflict is thus reduced to a quibble over whether the court was required to precede its clear action of reviewing the commissioners with the quotations of judicial chapter and

verse in the form of citation to opinions containing the principle of appellate review in fact applied. Respondent submits that a court's decision need not, to be proper, contain at every point a mechanical incantation of legal rubrics, whose absence becomes a cause for the losing side to place unwarranted emphasis on selected excerpts from an entire opinion which distort its intended meaning. The test of the adequacy of appellate review in the circumstances presented here should instead be what the court of appeals below *did*, and not the presumed authorities it may have failed to cite.

That this case presents a most unpromising field in which to find a conflict between courts of appeals, or between any of them and decisions of this Court—or even to find an error of law—is further shown by the decision, as yet unreported, on February 28, 1958, of the Court of Appeals for the Fifth Circuit in the companion case to the present proceeding. It will be remembered that the District Court in Georgia held that the same findings by the same commissioners as are involved here were "clearly erroneous." The Court of Appeals for the Fifth Circuit has now agreed with this conclusion.[3]

Thus in these two proceedings eight federal judges have considered the law and the facts. They are unanimous in declaring the law to be that given by this Court in *Anderson* v. *Mt. Clemens Pottery* 328 U.S. 680, 689. Indeed, the Court of Appeals for the Fifth

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[3] Judges Rives and Brown held that the district judge had properly set aside the commissioners' findings as "clearly erroneous" and that his substituted findings were themselves not "clearly erroneous." Judge Tuttle dissented.

Circuit cited one of its own prior opinions which sets forth the law succinctly and clearly enough:

> ". . . the duty to determine whether the referee's findings 'must be accepted' and whether the district judge has erred in not accepting them is not the district judge's but ours." *Phillips* v. *Baker*, 165 F. 2d 578, 581 (5th Cir. 1948).

With this view of the law taken by all eight judges the parties have now added their agreement. This would seem to indicate unanimity and leave little necessity for review by this Court. But a ground is put forward and is best exemplified by Judge Tuttle's dissent in the Fifth Circuit. Judge Tuttle was worried and his worries led him to dissent, not on the statement of law made by his brethren—for he cites the very words of the very cases which they thought controlling—but upon the way he thought that they applied the law. And why did he disagree with their application of the law? Because he disagreed with them on the facts. He thought that to upset the commissioners was "strongly against the weight of the evidence," and, therefore, quite understandably, found it hard to believe that seven other judges could find the commissioners' conclusions "clearly erroneous."

That Judge Tuttle's real argument, like that of Petitioner here, is upon the facts appears from his psychiatric examination of the opinions of both courts of appeals. Although they said that the real issue was whether the commissioners' findings were clearly erroneous, did they really mean this? Did not other phrases which they used suggest that they really believed the issue to be whether the district judges were "clearly erroneous" in holding that the commissioners'

findings were "clearly erroneous"? This is all very difficult because, as he points out, the opinion of the majority specifically stated (and quite rightly) that one of the questions before the court was whether the district court erred "in rejecting the findings of the commission as clearly erroneous." It would have been hard to quarrel with this, had it not seemed to Judge Tuttle that in some way or other this question had become "merged" with the question "whether the district court applied the proper standard in considering the findings." With the question at issue thus "merged" in his mind with some obscurity, it is understandable that Judge Tuttle had trouble with the court's conclusion. So, while he recognized that "the opinion of the majority does say 'we cannot say that the district court erred in rejecting the commission[ers'] findings as clearly erroneous'," he felt that "the majority was not prepared to say 'we think the commission[ers'] findings were clearly erroneous and we would set them aside.' "

The solution of this complex exercise in semantics will not be found in pursuing it further. The essence of Judge Tuttle's position, as of Petitioner's, is that he sided, as he frankly said, with the commissioners. The other seven judges thought their findings "clearly erroneous." That this is the case is demonstrated not by refining the meaning of words—an exercise known in academic circles as "you hold the sieve while I milk the barren heifer"—but by examining the examination which the court below gave to the commissioners' findings, as we have done on pages 13 through 16, *supra*.

III. The decision below, though not final as to the question of the value to be accorded flowage easements, laid down the correct principles of valuation to guide the district court on remand

The asserted third reason for granting the writ stems from the remand by the court below to the district court for further consideration of the question of whether and to what extent compensation must be paid by the Government for the taking of certain flowage easements.

The number of taken acres covered by Respondent's flowage easements, as well as the proper amount of compensation to be paid for such taking has, as yet, to be determined. Thus, Petitioner's third point, although a question of law and not of fact, is still in a hypothetical posture and not ready for review by this Court. In addition to this lack of finality, the third question presented by Petitioner is by now a rather tired element in the case. It has been much discussed and considered by four different tribunals on six different occasions during the eleven-year course of these proceedings.

However, if the substantive point raised by the Petitioner is to be met, the action of the court below can hardly be termed novel. Since Domesday, flowage easements have been recognized property rights.[4] So, in *Slattery Company* v. *United States,* 231 F. 2d 37, 44 (5th Cir. 1956), the Government paid just compensation for "expropriating a flowage easement in connection with the operation and maintenance of the Wallace Lake Reservoir dam project." Petitioner,

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[4] 3 Kent, Commentaries *439 (13th ed. 1884) and 3 Kent, Commentaries *440 n. x[1] (13th ed. 1884).

nevertheless, asserts the doctrine requiring compensation for the taking of a flowage easement to be a novel one. It was, says Petitioner, first announced by the Fourth Circuit, in *U. S.* v. *2979.72 Acres of Land, Etc.*, 237 F. 2d 165 (4th Cir. 1956). The doctrine is somewhat older.[5]

Respondent, through the purchase of flowage easements, obtained the right to flood for any purpose whatsoever land it did not own. The easements had value since they were the right to destroy the use of the

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[5] The Tennessee Valley Authority followed the policy, under certain circumstances, of taking only easements. Its Assistant General Counsel described the policy in this way:

> "No uniform policy has been followed with reference to the purchase of easements or fees, the decision being made largely on the basis of the type of land affected. In the larger municipalities, such as Knoxville, Chattanooga, and Decatur, where riverfront land has a distinct industrial or commercial value, the general policy of acquiring only easements has been followed. This has also been true where fertile land is affected which will still be valuable for agriculture after the construction of the reservoir, as in large parts of Douglas, Cherokee, Fort Loudoun, and Kentucky Reservoirs. On the other hand, where the land adjoining a reservoir is poor upland, valuable primarily for recreation, the general policy has been to acquire such lands in fee, as, for example, in the Norris and Hiwassee Reservoirs.
>
> "The determination of exactly what land or interest shall be taken cannot, however, be decided simply on the basis of general policies. Where a farm is entirely flooded, it is taken in its entirety; but where the maximum reservoir elevation runs through a piece of land or where roads serving the land are flooded, the decision as to what interest to take is based on a study of the effect of the reservoir on that particular piece of land." Land Acquisition Policies and Proceedings in TVA—A Study of the Role of Land Acquisition in a Regional Agency, by Charles J. McCarthy, Ohio State Law Journal, Vol. X, No. 1, Winter 1949, pp. 46, 50, 51.

land for agricultural and forest purposes. Yet, to Petitioner, the value of the servient agricultural and forest estate is irrelevant in valuing the flowage easement.[6] This is said to be so because the easement "gives no right to grow crops, raise cattle or cultivate trees." Indeed. The easements quite clearly gave the right to prevent such husbandry. No matter how the question is framed, it must be that the following items will enter into the value of these rights to flood: The agricultural and timber value of the land discounted by the probable time lapse prior to flooding and the extent and duration of the flooding.

Talk of the "unit rule" of valuation is as misleading as the use to which Petitioner puts *Boston Chamber of Commerce* v. *Boston,* 217 U.S. 189. There, three parties had an interest in the taken land. The Chamber of Commerce owned the fee and a building thereon; The Central Wharf and Wet Dock Corporation had an easement of way, light and air over the land; and the Boston Five Cents Savings Bank held a mortgage, subject to the easement. Mr. Justice Holmes, writing for the Court, affirmed a judgment based on a showing that the easement was of such great value to the Central Wharf and Wet Dock Corporation that "the market value of the estate of the Chamber of Commerce was little or nothing."

Respondent does not ask that the Court disregard the mode of ownership of the acres over which they

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[6] Petitioner's error results from the failure to distinguish the character of the easements in question from the much more common easements of way. The latter only authorize what may be called a right of crossing. This right is not necessarily related to the value of the use of the servient estate and may, in fact, be far more valuable than the land which bears the way. A flowage easement, on the other hand, is the right to destroy completely the use of the entire servient land.

have flowage easements. As Petitioner correctly states "the question is what the owner has lost, not what the taker has gained." Since the fee owners have lost little or nothing by the taking, their award must be diminished by the fact that the parcels of land are "not held as an unencumbered whole," but are subject to flowage easements. What was taken with respect to the flowage acres belonged not to the fee owners but to Respondents.[7]

Petitioner's last and Parthian arrow is that in any event Respondent's flowage easements are worthless.[8] This is said to follow from the fact that this Court has held that just compensation need not be paid for "the value of the land as a site for hydroelectric power operations." *United States* v. *Twin City Power Company,* 350 U.S. 222, 224. Respondent naturally quarrels with this holding, but in any event all this Court announced in the *Twin City* case was that in taking the property in question, the Government need compensate only for the destruction of the agricultural and forest value of the land. The right to destroy this value, for which the Government must pay, is the thing which Respondent owns.

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[7] As the Petition implies, it may be that the fee owners of the flowage acres have been over-compensated since they have been paid as if the easements in question did not exist. This represents an application of the "unit rule" to which Petitioner asserts that it objects. What Petitioner may have done was to pay the fee owners in question as if they owned "an unencumbered whole." Boston Chamber of Commerce v. Boston, supra. Such an error by Petitioner should not permit the taking for nothing of Respondent's property.

[8] Petitioners cite (Petition, pp. 15, 18) the conclusion of the commissioners that the flowage easements were without value. This legal conclusion is, of course, here at issue.

Petitioner, by stating that all Respondent owns is the right to flood solely for a hydroelectric power site, attempts to force the conclusion that the flowage easement is worthless absent the factor of the hydroelectric power site. However, what Respondent owns is the right to flood and thereby destroy the use of the servient estate for any purpose whatsoever. Petitioner has taken only what Respondent already owns by a prior purchase from the fee owners. Thus, though the exclusion of the power site factor diminishes the compensation that must be paid flowage tenants, it does not extinguish it. If Respondent errs, the Government may take as it pleases without thought of compensation whenever the lands are riparian and the purpose is hydroelectric.

CONCLUSION

For the foregoing reasons, it is submitted that none of the three grounds urged for granting the writ are valid and the petition should be denied. Should the petition nevertheless be granted, it should be limited to the third question presented.

Respectfully submitted,

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March, 1958

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

C/A No. 786

UNITED STATES OF AMERICA

vs.

3,829.09 ACRES OF LAND, MORE OR LESS, IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

C/A No. 1033

UNITED STATES OF AMERICA

vs.

3,906.24 ACRES OF LAND, MORE OR LESS, SITUATE IN McCORMICK COUNTY, SOUTH CAROLINA, ET AL.

C/A No. 1073

UNITED STATES OF AMERICA

vs.

5,231.66 ACRES OF LAND, MORE OR LESS, SITUATED IN McCORMICK COUNTY, SOUTH CAROLINA, AND ANNIE PEARL ROBERTSON, ET AL.

Order

When these condemnation proceedings were before this Court on Objections filed by both parties to the Report of the Commissioners of May 14, 1953, the question of the value of the Twin City property for agricultural purposes was not reached since it was my view that the highest and best use for the properties was in connection with the waters of the Savannah River for hydro electric purposes. This use was so probable at the time of taking that it nec-

essarily affected market value and my award was based on this potential use. *United States* v. *Twin City*, 114 F. Supp. 719. After affirmance by the Court of Appeals (215 F.2d. 592) the United States Supreme Court reversed, holding that the portion of the market value attributable to the proximity of the land to the navigable Savannah was not to be included in the just compensation due the landowner when the United States condemns. *United States* v. *Twin City Power Co.*, 350 U.S. 222.

The companion condemnation proceedings involving the Georgia land followed a similar course. *United States* v. *Twin City Power Company of Georgia*, 221 F. (2d) 299; 350 U.S. 956.

On remand motions to reopen and to receive additional testimony were filed by the two Twin City corporations, respectively, and Judge Scarlett, of the Southern District of Georgia, and I sat together to hear the matter on these motions and on the objections heretofore filed in each Court to the Report. At the hearing Twin City withdrew its motions to re-refer the cause to Commissioners, but pressed its objections to the Report. The United States abandoned its objections to the Report and moved to confirm the findings of agricultural value contained in the Report.

The controlling principle in reviewing Commissioners' findings and recommendations is thus stated in *United States* v. *Waymire* (1953), 202 F.2d. 550, 553:

> Under the plain language of Rule 53, it is the duty of the court to accept the findings of fact made by a master unless they are clearly erroneous. But the findings of a master may be modified in part, or rejected in toto, if they are clearly erroneous. In like manner, under the equally clear language of Rule 71A(h), the findings and awards of a commission shall be accepted unless they are clearly erroneous. But they may be modified in part, or rejected in toto, if they are clearly erroneous. And even though there is evidence to sustain findings of a master or a commission, as the case may be, they are clearly erroneous if the reviewing court on the entire evidence has the definite and firm conviction that a mistake has been committed.

United States v. *U. S. Gypsum Co.*, 333 U.S. 364, 395; *Beckley* v. *Boone* (4 Cir.), 115 F.2d. 513, 515-516.

With this principle as a guide, I have carefully reviewed all of the evidence on agricultural value to determine on the entire record whether the Commissioners' findings are clearly erroneous and if so, what is the proper award to be made for each of the tracts involved.

Twin City offered two experienced land appraisers. One, W. N. Henderson of Ninety-Six, in Greenwood County, South Carolina, is a Clemson College graduate with 14 years of experience as a Federal Land Bank appraiser and 4 years with FHA. The other, Benjamin R. T. Todd, was educated at Clemson and at the Naval Academy. He had long years of experience as Senior Appraiser with the Federal Land Bank in Columbia. Each has appraised many tracts of land in the area of the Clark Hill reservoir. Both of these witnesses, as well as the witnesses for the United States, have testified before me in other condemnation cases.

Mr. Henderson, after detailed study of the several tracts being considered, determined that the principal agricultural uses of these lands were for pasturage to feed cattle, which at the time of taking was an important and growing use of lands in this area, and for the growing of pine. Some 300 acres of bottom land were also useful for row crops. All of the witnesses for both sides agreed that raising cattle and pine had become the chief use of lands in this area, though row crops were still planted in the bottoms.

Mr. Henderson concluded that, aside from the value of timber and pulp wood on these tracts, the 300 acres of bottom land was worth $100.00 per acre and the other 1300 acres had a value of $85.00 per acre. In reaching these conclusions, Mr. Henderson took into consideration the amount it would take to put land into pasturage condition, the yield from tree farming, the price of timber and pulp wood, the demand for such lands. He valued the timber on the properties at $17,000.00 and the strip of land used for a railroad (5.80 acres) at $1500.00. His total valuation for Twin City's South Carolina properties was $159,425.00.

Mr. Todd's valuation at $100.00 per acre aggregated $161,080.00.

The United States offered as its timber appraiser Clark Honnold, who made a detailed study of each tract and concluded that the total value of the standing timber and pulp wood aggregated $13,338.00. The Commissioners accepted this valuation in preference to the somewhat higher figure given by Mr. Henderson. Apparently the chief difference between the witnesses was due to price rather than to the amount of timber. I cannot say that the Honnold appraisal is clearly erroneous. Therefore the findings of timber value are confirmed.

The United States presented as its chief land witness Spencer Cooley, who was employed by it as a full time appraiser from 1946 until 1951. Never having previously appraised or sold land in this area, Mr. Cooley adopted a "comparable sales" method for his testimony here. From the Clerk's office in McCormick County, South Carolina, in which county the Twin City lands are located, he listed some 400 transfers of rural lands between 1945 and 1950, which he listed as "Comparable Sales." From this list of 400 he selected seven for use in comparison with the Twin City properties in South Carolina. Of these seven, five were of sales in 1948 or prior thereto, two in 1949 and none in 1950 or 1951. Yet the Twin City lands were condemned in December, 1949, and July, 1950. Mr. Cooley admits that it was almost impossible to buy land in McCormick in 1950 and concedes that to buy land in that County at the time of taking one would have to pay a much higher price than his appraisals. Again of the seven "comparable sales" Mr. Cooley includes five which were in the reservoir area and sales which were made after the development of Clark Hill was announced. These would not be market value sales because no farmer would buy knowing that the United States would flood the land within a year or two. For these reasons I find little of probative value in Mr. Cooley's testimony.

The Commissioners in their finding followed the appraisal of James M. Cox who testified for the Government. Mr. Cox is a furniture dealer, a cattle raiser and a sawmill operator. He had no experience in handling real estate for others and little for himself. Instead of testifying as to market value he appraised so as to allow for "making a sawmill man's profit on it." The testimony does not

show how much below market value this is. He was unwilling to state the land's worth for pasture though he stated that one of its best uses was for raising cattle. His is not the type of testimony on which an award should be based when there is in the record so much more reliable evidence.

Another Government witness, the Augusta broker Gould Barrett, had never inspected the Twin City lands, had not sold any lands in McCormick County in the five years before his testimony in his case, and was unfamiliar with timber prices. These witnesses for the United States placed a per acre value on the Twin City lands of between $15.00 and $25.00 per acre. The Commissioners, adopting the testimony of James M. Cox on land and Clark Honnold on timber, added a value of $5.00 per acre for assembling and arrived at a total value of about $30,000.00 as compared with the Henderson and Todd appraisals of about $160,000.00.

The findings of the Commissioners as to the agricultural value of these South Carolina lands based on the Cox appraisal are clearly erroneous as that term is defined hereinabove.

Twin City owned in fee a strip of land some two miles in length running from the C. & W. C. Ry. near Modoc to its dam site at Price's Island. A railroad was built on this 30' strip of land. Most of the strip, totalling 5.80 acres, was taken by the United States. The Commissioners awarded nothing, though concededly it was owned in fee. The testimony of Mr. Henderson is that it was worth $1500.00. While such a strip is difficult to appraise since no farmer would sell a strip through his property except at an exorbitant price, it has limited use for the owner. However, the Report is clearly erroneous in not fixing some value for this.

The Commissioners found that Twin City had assembled into one ownership this large block of land, and added $5.00 per acre for the increase in value attributable to this assembling. Neither side has objected to this holding and it is therefore adopted by the Court.

Twin City also urges for consideration on the issue of value the fact that in arriving at a total market value for

the Twin City lands in South Carolina and Georgia the Commissioner accepted the testimony of William Creager that the market value of the property was $1,600,000.00, but in fixing the total award deducted therefrom $343,000.00 as the amount which Twin City would have been required to pay for 745 acres of land over which it held "expired options" and which the witness Creager assumed Twin City had the right to flood. The Commissioners used a hold-up price of $460.00 per acre for this land, which was arrived at by using an actual agricultural value of $80.00 per acre and multiplying this by a hold-up factor of 5.7.

Twin City by its objection 9(b) asked the District Courts to raise the total award of $1,257,000.00 because the deduction of $343,000.00 was based on an agricultural value of $80.00 per acre and elsewhere the Commissioners had fixed an agricultural value of approximately $30.00 per acre. The United States successfully opposed this increase in valuation and the two District Courts affirmed the award of $1,257,000.00. (See Opinion, 114 F. Supp. 724). Since the 745 acres valued by this computation at an agricultural value of $80.00 by the Commissioners and the District Courts is immediately contiguous to and of the same character as the fee lands now before the Court, Twin City argues that my decree of August 26, 1953 is an adjudication that the agricultural value of this land is $80.00 per acre.

While this argument is plausible, I am not prepared to agree that this refusal to raise the award of the Commissioners constitutes an adjudication of the agricultural value. However, this points to a major inconsistency in the Commissioners' report. If the agricultural value is $80.00 per acre when a deduction from power value is under consideration, it is difficult to rationalize a value of $30.00 when agricultural value is the yard stick of just compensation. This inconsistency confirms my view that the Report is clearly erroneous in its determination of land values as distinguished from timber values. It therefore becomes my duty on consideration of the entire record to fix the just compensation for each of these tracts without giving any consideration to that part of their market value attributable to the proximity of these lands to the Savannah River.

These then are the contentions of the parties as modified by my confirmation of the Honnold timber appraisals and the added value for assembling the property:

CONTENTION OF THE UNITED STATES

(Based on the Commissioners' Report)

Civil Action No. 786. Declaration of Taking Filed June 23, 1947.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
C-215	5.80	$ None	$ None	$ No value
Assembling value at $5.00 per acre				29.00
Total value				$ 29.00

Civil Action No. 1033. Declaration of Taking Filed December 21, 1949.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
F-500	1,033.00	$24,744.80	$8,184.80	$32,929.60
H-700	497.00	12,799.00	4,847.00	17,646.00
				$50,575.60
Value of assembling at $5.00 per acre				7,650.00
Total value				$58,225.60

Civil Action No. 1073. Declaration of Taking Filed July 5, 1950.

Tract No.	Acreage	Land Valuation	Timber Valuation	Total
H-732	70.00	$ 1,257.00	$ 107.00	$ 1,364.00
F-541 (part)	5.00	100.00	200.00	300.00
				$ 1,664.00
Value of assembling at $5.00 per acre				375.00
Total value				$ 2,039.00

CONTENTION OF TWIN CITY

(Based on Henderson Testimony with Honnold Timber)

Civil Action No. 786.

Tract No.	Acreage		Henderson Land Appraisal With Honnold Timber Appraisal
C-215	5.80		$ 1,500.00

Civil Action No. 1033.

Tract No.	Acreage		
F-500	1,033	175 acres at 100	$ 17,500.00
		858 acres at 85	72,930.00
		Timber	8,184.00
		Value of assembling at $5.00 per acre	5,165.00
		Total	$103,779.00
H-700	497	100 acres at $100	10,000.00
		397 acres at 85	33,745.00
		Timber	4,847.00
		Value of assembling at $5.00 per acre	2,485.00
		Total	$ 51,077.00

Civil Action No. 1072.

Tract No.	Acreage		Henderson Land Appraisal With Honnold Timber Appraisal
H-732	70	25 acres at 100	$ 2,500.00
		45 acres at 85	3,825.00
		Timber	107.00
		Value of assembling at $5.00 per acre	350.00
		Total	$ 6,782.00
F-541	5	At 85	425.00
		Timber	200.00
		Value of assembling at $5.00 per acre	25.00
		Total	$ 650.00

The most careful appraisal of the land as distinguished from the growing timber was by the witness Henderson. His experience as an appraiser lends weight to his valuation. The Commissioners described him as a competent land evaluator. My observation of him as a witness in other condemnation cases leads me to the same conclusion. After a study of all of the evidence it is my view that his testimony is entitled to more weight than that of the witnesses for the United States. However, I have concluded

that in fixing just compensation the evidence of the Government witnesses should be given some weight and therefore in establishing the awards for the several tracts I have reduced the Henderson appraisals.

The just compensation to which the landowner is entitled for the several tracts is as follows:

C/A 786	Tract C-215	5.80 acres		$ 1,200.00
C/A 1033	Tract F-500	1,033 acres	$83,119.00	
	Tract H-700	497 "	41,137.00	$124,256.00
C/A 1073	Tract H-732	70 "	$ 5,382.00	
	Tract F-541	5 "	550.00	$ 5,932.00

It is therefore Ordered that judgments be entered in Civil Actions 786, 1033 and 1073 in accord with this order with interest from the respective dates of taking, subject to credit for such sums as have heretofore been paid into court.

C. C. WYCHE,
United States District Judge for the Western District of South Carolina.

November 1, 1956.